

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL **74-1104**

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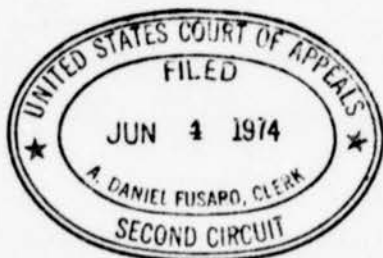
IN THE
United States Court of Appeals
For the Second Circuit

SILVER CHRYSLER PLYMOUTH, INC.,
Plaintiff-Appellee,
against

CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION,
Defendants-Appellants.

JOINT APPENDIX
VOLUME II OF TWO VOLUMES
(Pages 212a to 521a)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

KELLEY, GAYE, KENDALL, AND ASSOCIATES
ATTORNEYS AT LAW
NEW YORK, N.Y.

MAR 1 1967

ROCCO MOTOR SALES CORPORATION,

Plaintiff,

ATTY'S FOR
COMPLAINT

-against-

CHRYSLER MOTORS CORPORATION,

Defendant.

Plaintiff, for its complaint herein, alleges as follows:

FOR A FIRST CAUSE OF ACTION

1. That Plaintiff is a corporation incorporated under the laws of the State of New York and having a principal place of business at 440 White Plains Road, Eastchester, Westchester County, New York.

2. That, on information and belief, Defendant CHRYSLER MOTORS CORPORATION, hereinafter referred to as CHRYSLER MOTORS was and still is a corporation organized under and existing by virtue of the laws of the State of Delaware, and is authorized to do business in the State of New York.

3. That, the Summons herein was served pursuant to Section 302 of the Civil Practice Law and Rules of the State of New York as the facts here and after set forth will show.

4. That, on information and belief, CHRYSLER MOTORS is a wholly owned subsidiary of Chrysler Corporation; that said CHRYSLER MOTORS is the vehicle and instrumentality for the contracting of De Soto - Plymouth Dealers throughout the United States and for the sale to them of the above-named passenger automobiles for resale to the public and is a corporation which acts for and is under the direct control of Chrysler Corporation in that connection.

5. That, Rocco Motor Sales Corporation hereinafter referred to as "ROCCO", has been in the business of selling

"Chrysler" products since in or about 1927 under various agreements with CHRYSLER, CHRYSLER MOTORS and other subsidiaries of CHRYSLER.

6. That, at the present time, a direct Dealer Agreement is now in effect between ROCCO and CHRYSLER MOTORS relative to the De Soto and Plymouth passenger automobiles that incorporates various provisions of "Sales Agreement" between De Soto Direct Dealer and Chrysler Corporation De Soto Division.

7. That in contemplation of and in relying on the Direct Dealer Agreements previously set forth and in accordance with the understanding of the parties herein, and the prior custom and usage established between the parties herein including Chrysler and Chrysler subsidiaries, ROCCO acquired premises, constructed premises including showrooms, garages, used car lots, service parking areas.

8. That relying on the heretofore mentioned Direct Dealer Agreement and pursuant to the provisions of said Direct Dealer Agreements and at the insistence of and relying on the representations of Chrysler and CHRYSLER MOTORS and other subsidiaries thereof, ROCCO has spent large sums of money in connection with the maintenance, improvement and operation of said premises.

9. That the Agreement heretofore referred to herein has never been abrogated or terminated but continues to be in full force and effect herein.

10. That pursuant to said Direct Dealer Agreement CHRYSLER MOTORS agreed to sell and ROCCO agreed to purchase De Soto passenger automobiles, parts and accessories for resale within the sales locality specified in said Direct Dealer Agreement.

11. That pursuant to said Direct Dealer Agreement, and pursuant to all prior Direct Dealer Agreements, and further pursuant to representations by Chrysler and CHRYSLER MOTORS both in writing and orally, ROCCO continued to order

DI Soto passenger automobiles, parts and accessories from CHRYSLER MOTORS and CHRYSLER MOTORS continued to supply ROCCO with DI Soto passenger automobiles, parts and accessories, until the latter part of 1960, when CHRYSLER MOTORS discontinued production, frustrating and making impossible the further ordering of the said DI Soto automobiles.

12. That ROCCO has, over its years of association with Chrysler, CHRYSLER MOTORS and other subsidiaries of Chrysler, built up and enjoyed considerable customer good will with the sale of DI Soto passenger automobiles resulting in obtaining a substantial number of customers who were "repeat" customers of DI Soto passenger automobiles.

13. That ROCCO has, over its years of association with Chrysler, CHRYSLER MOTORS and other subsidiaries of Chrysler, through its service and parts departments built up and enjoyed large degrees of customer good will with DI Soto owners and has sold DI Soto parts and accessories in connection with the servicing and maintenance of DI Soto passenger automobiles.

14. That in accordance with said Direct Dealer Agreements, ROCCO has, over its years of association with Chrysler, CHRYSLER MOTORS and other subsidiaries of Chrysler, advertised its facilities and the Chrysler product, namely DI Soto passenger Automobiles, at great expense to ROCCO and of benefit to CHRYSLER MOTORS and its subsidiaries of Chrysler.

15. That on or about November 18, 1960, CHRYSLER MOTORS discontinued their production of DI Soto passenger automobiles, and thereafter in the years 1961 and 1962 and subsequent thereto limited itself to the supply of parts and accessories for existing DI Soto automobiles. That by so discontinuing the production of DI Soto automobiles said agreement heretofore mentioned was breached in that said DI Soto automobiles were no longer available to ROCCO for resale and in that the supply of parts for existing automobiles was not really available thereafter as it was prior thereto to the discontinuance of said DI Soto passenger automobile production.

16. That as a result of the discontinuance of production of the D1 Soto passenger automobile by CHRYSLER MOTORS and its failure to supply ROCCO with D1 Soto passenger automobiles, and its failure to make readily available parts for existing automobiles, CHRYSLER MOTORS did thereby breach the said Direct Dealer Agreement heretofore referred to herein.

17. That as a result of the said breach by CHRYSLER MOTORS, ROCCO has suffered and will in the future suffer damages to its business and property and loss of profits in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

AS AND FOR A SECOND CAUSE OF ACTION HEREIN

18. That, ROCCO herein, repeats the allegations in Paragraphs designated 1 through 16 of the Complaint herein as if the same were set out at length.

19. That the acts of CHRYSLER MOTORS herein, Chrysler and its subsidiaries in discontinuing production of the D1 Soto passenger automobile did thereby tortiously interfere with ROCCO's contractual relations with CHRYSLER MOTORS and with ROCCO's prospective economic advantage.

20. That as the direct and proximate result of the tortious interference by CHRYSLER MOTORS, Chrysler and its subsidiaries with ROCCO's contractual relationship, ROCCO has suffered and will in the future suffer damages to its business and property and loss of profits in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

AS AND FOR A THIRD CAUSE OF ACTION HEREIN

21. That ROCCO repeats the allegations of Paragraphs designated 1 through 16 of the Complaint as if the same were set forth at length herein.

22. That some time in 1961, CHRYSLER MOTORS, Chrysler or other of its subsidiaries sent to all D1 Soto owners, including D1 Soto owner-customers of Plaintiff, ROCCO, a letter or brochure or other literature, relative to

the discontinuance of Di Soto and which letter, brochure or other literature in part and essence stated, "your Dodge and Chrysler Dealer is best qualified to give your Di Soto the genuine factory approved service it deserves".

23. That by said act CHRYSLER MOTORS, and its parent company, Chrysler, together with other of its subsidiaries, together with other allegations heretofore set forth, tortiously interfered with ROCCO's business and prospective economic advantage.

24. That as the direct and proximate result of the tortious interference by Chrysler Motors Corporation, Chrysler and other of its subsidiaries, with ROCCO's business and prospective economic advantage, ROCCO has suffered and will in the future suffer damages to its business and property and loss of profits in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

AS AND FOR A FOURTH CAUSE OF ACTION HEREIN

25. That, ROCCO repeats the allegations in paragraphs designated 1 through 16 of the Complaint as if the same were set forth at length herein.

26. That CHRYSLER MOTORS in conjunction with Chrysler and other subsidiaries of Chrysler not known to this Plaintiff, participated and encouraged the sending of the heretofore mentioned letters, brochures or other literature and did so with full knowledge that same would cause injury and loss to ROCCO.

27. That said act by the Defendant CHRYSLER MOTORS, tortiously interfered with ROCCO's business and prospective economic advantage.

28. That as a direct and proximate result of the tortious interference by CHRYSLER MOTORS, with ROCCO's business and prospective economic advantage, ROCCO has suffered and will in the future suffer damages to its business and property and loss of profits in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

AS AND FOR A FIRST CAUSE OF ACTION HEREIN

29. That Plaintiff, ROCCO, repeats the allegations in Paragraphs designated 1 through 16 of the Complaint herein as if same were set forth at length.

30. That, on information and belief, prior to the formal announcement by CHRYSLER MOTORS of the discontinuance of the Di Soto passenger automobile, said CHRYSLER MOTORS together with its parent company, Chrysler and other Chrysler subsidiaries had already formulated plans for the discontinuance of the said Di Soto passenger automobile and at or about same time, formulated its plans for the production of the Chrysler "Newport" which in fact it did produce and distribute at the same time as the 1961 Di Soto passenger automobile was produced and distributed.

31. That at or about the time that Chrysler, CHRYSLER MOTORS, and other Chrysler subsidiaries announced its decision to discontinue the Di Soto passenger automobile, the reason given therefore by Chrysler, CHRYSLER MOTORS and other Chrysler subsidiaries was that there was a shift away from the medium priced car market by consumers. That if such shift was true, it was nevertheless not so great as to necessitate the abandonment of the Di Soto passenger automobile. That such reason was, in fact, false and a cover to the real intention of and motive for the discontinuance of the Di Soto passenger automobile, namely to remove the Di Soto dealers and more particularly, ROCCO, from the business and to concentrate the sale of Chrysler products, including the equivalent of the Di Soto passenger automobile, ^{with} and Chrysler and Dodge dealers.

32. That at the time of the discontinuance of the Di Soto passenger automobile and subsequent thereto, CHRYSLER MOTORS, Chrysler, its parent company, and other Chrysler subsidiaries, did, in fact, produce two new passenger automobiles, namely the Chrysler "Newport" and the Dodge "Custom 830".

Both of said automobiles were in the medium priced class and were equivalent to the 1961 Di Soto passenger automobile. Said "Newport" and "Custom 890" were designed to take the place of the Di Soto passenger automobile in the automobile market, despite the fact that CHRYSLER MOTORS contended that the decision to discontinue Di Soto passenger automobiles was due to the shift away from the medium priced market by consumers.

33. That said "Newport" and "Custom 890" were not made available to Di Soto dealers and particularly, ROCCO, despite repeated requests for same.

34. That CHRYSLER MOTORS did thereby conspire with Chrysler, and, on information and belief, other subsidiaries of the parent company herein, Chrysler, to cause a breach of the Direct Dealer Agreement and to commit the acts hereinbefore set forth with the sole object, intent and purpose to interfere with ROCCO's prospective economic advantage and to place ROCCO in such an economic disadvantage as to cause ROCCO to terminate and discontinue its business.

35. That as a direct and proximate result of the foregoing acts heretofore alleged, ROCCO has suffered and will in the future suffer damages to its business and property and loss of profits in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

WHEREFORE, Plaintiff demands Judgment against the Defendant herein as follows:

- 1) In the amount of \$100,000.00 for the First Cause of Action;
- 2) In the amount of \$100,000.00 in the Second Cause of Action;
- 3) For punitive damages against the Defendant herein for wrongful and tortious conduct;
- 4) In the amount of \$100,000.00 on the Third Cause of Action;

- 5) For punitive damages against the Defendant herein for wrongful and tortious conduct;
- 6) In the amount of \$100,000.00 for the Fourth Cause of Action;
- 7) For punitive damages for the wrongful and tortious conduct of the Defendant herein;
- 8) In the amount of \$100,000.00 for the Fifth Cause of Action;
- 9) That this Court charge the Defendants herein with the full costs of this suit, including as a part thereof, a reasonable attorney's fee for the services of Plaintiff's attorney;
- 10) That the Plaintiff have such other and further relief as may be just and proper.

NICHOLAS COLABELLA
Attorney for Plaintiff
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Eastchester, New York
779-1648

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF NEW YORK

DAYSIDE MOTORS, INC., SAMUEL J.
WISNER, SHIRLEY WISNER, NORMAN
WISNER, LAWRENCE WISNER,

Plaintiffs,

-against-

CHRYSLER CORPORATION, CHRYSLER
MOTORS CORPORATION, SCHWEILER-FUREY
CORPORATION, JEROME SCHWEILER and
LAMBERT R. FUREY, JR.,

Defendants.

Civil Action

COMPLAINT

Plaintiff demands
a jury trial.

DAYSIDE MOTORS, INC., SAMUEL J. WISNER, SHIRLEY
WISNER, NORMAN WISNER, and LAWRENCE WISNER, plaintiffs,
by their attorneys, WEISBERG & EPSTEIN, bring this action
against defendants, and allege as follows:

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings
are instituted against defendants under the Sherman Anti-
trust Act, 26 Stat. 209, et seq., 15 U.S.C. §1, et seq.,
the Clayton Act, 38 Stat. 730, et seq., 15 U.S.C. §12,
et seq., and, more particularly, §§ 15 and 26, the Auto-
mobile Dealer Franchise Act, 70 Stat. 1123, et seq., 15 U.S.
C., §1221, et seq., and for breach of contract, and tor-
tious inducement of breach of contract.

2. The jurisdiction of this Court over the
First, Second, Third and Fifth claims adheres as a result
of the statutes recited in Paragraph 1. Jurisdiction
over the Fourth Claim derives from the diversity statute
28 U.S.C. 1332. Plaintiffs and defendants Chrysler

Corporation and Chrysler Motors Corporation, the parties to the Fourth Claim, are residents of different states and the amount claimed, exclusive of interest and costs, exceeds the sum of \$10,000. Jurisdiction over the Fourth Claim also attaches as the result of the doctrine of pendant jurisdiction, as does jurisdiction over the Sixth Claim.

3. Plaintiff Layside Motors, Inc., a New York corporation is an automobile dealer and service establishment which from 1934 until March 1939, operated Chrysler, Plymouth and Imperial franchises under direct dealer agreements for about four years in Bayside, Long Island, New York, and since 1938 at 234 Main Street, Hempstead, Long Island, New York.

4. Plaintiffs Samuel J. Wishner, Shirley Wishner, Norman Wishner and Lawrence Wishner, are the owners of the stock in plaintiff Layside Motors, Inc., and of the real estate at 234 Main Street, Hempstead, Long Island, New York, where said corporation has been doing business under a long-term lease. Plaintiffs Samuel J. Wishner and Shirley Wishner are residents of Kings Point, Nassau County, State of New York; plaintiff Norman Wishner is a resident of the City, County and State of New York; Lawrence Wishner is a resident of West Hysterville, State of Maryland.

5. Defendant Chrysler Corporation, a Delaware corporation, maintains its principal offices in Detroit, Michigan, and New York offices at the Chrysler Building in the Borough of Manhattan, City and State of New York. It is the third largest manufacturer of automotive ve-

bicles and automotive parts in the United States. Such vehicles and parts are distributed and sold in all of the States of the United States and many other parts of the world.

6. Defendant Chrysler Motors Corporation, a Delaware corporation, maintains its principal offices in Detroit, Michigan, and regional offices for its various makes of automotive vehicles in Rye, New York. Defendant Chrysler Motors Corporation, a wholly owned subsidiary of defendant Chrysler Corporation, is engaged in the business of selling Chrysler automobiles and parts to dealers located in all of the states of the United States. Both Chrysler defendants transact business and are found within the Southern District of New York.

7. Defendant Schneider-Furey Corporation, on information and belief, is a New York corporation franchised as a Chrysler-Plymouth dealership at 223 North Franklin Street, Hempstead, Long Island, New York. Defendants Joseph Schneider and Lambert R. Furey, Jr., on information and belief, reside in Long Island, New York, and are the principal stockholders managing and responsible for the corporate affairs of Schneider-Furey Corporation.

8. During all times material herein defendant Chrysler Corporation has been engaged in the manufacture of automobiles, other vehicles and automotive parts in the State of Michigan, and defendant Chrysler Motors Corporation has been engaged in the sale of such vehicles to many hundreds of dealers located throughout the United States and elsewhere. During the year ending December 31, 1950,

defendant Chrysler Corporation produced more than one million automobiles at its factory in the State of Michigan, which were sold by defendant Chrysler Motors Corporation in interstate commerce to customers, mostly franchised dealers located in other states.

9. Defendant Schneider-Furey Corporation and its owners Joseph Schneider and Lambert R. Furey, Jr. have been at all times material herein engaged in the business of selling automobiles and automotive parts and services, and since in or about April of 1959, have been operating a franchised Chrysler-Plymouth dealership at 229 North Franklin Street, Hempstead, Long Island, New York, selling the vehicles produced by defendant Chrysler Corporation in the State of Michigan, to ultimate consumers.

10. The alleged violations hereinafter described have been and are being carried out in part within the Southern District of New York.

FIRST CLAIM: **AGAINST DEFENDANT CHRYSLER
MOTORS CORPORATION ONLY.**

Section 2A of the Clayton Act, as amended, 15
U.S.C. 13A, 49 Stat. 1525, 35 Stat. 720.

11. From 1938 to March 19, 1959, plaintiff Bayside Motors, Inc. operated Chrysler, Plymouth and Imperial franchises under direct dealer agreements at 204 Main Street, Hempstead, Long Island, New York.

12. Plaintiff, Bayside Motors, Inc. purchased Chrysler, Plymouth and Imperial automobiles throughout the lives of its franchises from defendant Chrysler Motors

Corporation at the regular dealer price charged by said defendant under its dealer price lists which purport to contain uniform prices charged by defendant Chrysler Motors Corporation to all dealers in the eastern part of the United States for vehicles of like grade and quality.

13. Starting in or about the beginning of the year 1956, defendant Chrysler Motors Corporation sold automobiles to franchised dealers located close to the place of business of Bayside Motors, Inc., in Hempstead, Long Island, New York, and more particularly to Adduci Motors, Inc., subsequently known as Lori Motor Sales Corp. of Hempstead, Long Island, and, particularly, Plymouth, Chrysler and DeSoto vehicles, at prices lower than prices charged to plaintiff Bayside Motors, Inc., by defendant Chrysler Motors Corporation for the same or similar vehicles, at or about the same times.

14. The Greater Metropolitan New York area, which consists of the City of New York, the suburban areas contiguous thereto in Long Island and Westchester County, and nearby counties of the States of New York, New Jersey and Connecticut, constitutes a single market or trade area for the sale of automobiles. A preferential price afforded by defendant Chrysler Motors Corporation to a particular dealer in such market will affect some or all other dealers in the said Greater Metropolitan market, since all retail outlets for automobile products within such market are readily accessible to all consumers within this area, and different prices are widely advertised and become known to

potential customers for automobiles.

15. Plaintiff Bayside Motors, Inc., in the operation of its dealership in Hempstead, Long Island, at all times material herein, has been in direct competition with said Adduci Motors, Inc., and Lori Motor Sales Corp., and other favored dealers of Chrysler, located within the Greater Metropolitan New York area.

16. Defendant Chrysler Motors Corporation, as previously alleged, is engaged in interstate commerce, and such price discrimination practiced by it, as alleged in paragraphs 12 and 13 herofore, involves purchases made by plaintiff Bayside Motors, Inc. and plaintiff's competitors in interstate commerce, and said discrimination is in the sale of commodities of like grade and quality sold for ultimate consumption or for resale within the United States. The effect of such discrimination has been substantially to lessen competition between plaintiff Bayside Motors, Inc. and other retail dealers of defendant Chrysler Motors Corporation, and to injure, destroy or prevent competition by plaintiff Bayside Motors, Inc. with said favored dealers.

17. By reason of the price discrimination aforesaid, the public has been unfairly led and induced to do business with dealers favored by lower prices from defendant Chrysler Motors Corp. because such dealers have been able to advertise specific models of Chrysler products at competitively lower prices, thus inducing the public to come to their business premises, to whom were sold other models of cars by such favored dealers at the regular and com-

petively equal prices therefor, all of which gave promotional, customer contact and selling advantages to such favored dealers over plaintiff Dayside Motors Inc.

18. The aforesaid discriminatory sales by defendant Chrysler Motors Corporation are forbidden by §2A of the Clayton Act, as amended, 15 U.S.C., §13A, and entitle plaintiffs to relief in accordance with the provisions of 15 U.S.C. §15.

**SECOND CLAIM: Against Defendant Chrysler
 Motors Corporation Only**

**VIOLATION OF §2E, 15 U.S.C., §13, 38 Stat.
739, 49 Stat. 1529.**

19. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-12, 14 and 15 above.

20. A substantial number of vehicles sold by defendant Chrysler Motors Corporation to Adduci Motors, Inc. and Lori Motor Sales Corp. as aforesaid were slightly used cars driven by field representatives and employees of said defendant for varying distances. Such vehicles were sold by Adduci Motors Inc., and Lori Motor Sales Corp. to the public as new cars, or as low-mileage cars, at prices lower than the prices which plaintiff Dayside Motors, Inc. was able to charge for similar new vehicles.

21. At no time did defendant Chrysler Motors Corporation make available to plaintiff Dayside Motors, Inc. the service or facility of purchase of similarly slightly used or low mileage vehicles at similarly lower prices or inform plaintiff Dayside Motors, Inc. that such vehicles

could be obtained from said defendant.

22. By the acts of defendant Chrysler Motor Corporation as aforesaid, plaintiff was deprived of services or facilities made available to its competitors, and not accorded to said plaintiff on proportionately equal terms: (a) the purchase from defendant Chrysler Motors Corporation of new vehicles at prices below dealer list and (b) the purchase from defendant Chrysler Motors Corporation of used or slightly used vehicles.

23. As a result of defendant Chrysler Motors' failure to accord said services or facilities to plaintiff Bayside Motors, Inc., Adduci Motors, Inc. and Lori Motor Sales Corp. were able to publicly sell vehicles at prices so low as to draw patronage away from said plaintiff for all purposes, and to leave it in the position of being overpriced in the highly competitive automobile market. The failure to make available such services and facilities to plaintiff Bayside Motors, Inc. on proportionately equal terms had the effect of substantially restraining the trade of said plaintiff and of causing injury to the public.

24. Defendant's acts and conduct described in this second claim are forbidden by §23 of the Clayton Act, as amended, 15 U.S.C. §132, and entitle plaintiff to relief in accordance with provisions of 15 U.S.C. §15.

THIRD CLAIM: Against Defendants Chrysler
Corporation and Chrysler Motors
Corporation

VIOLATION OF THE AUTOMOBILE DEALER FRANCHISE
ACT, 15 U.S.C., §1221, 70 Stat. 1125.

25. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-12/

26.2 Plaintiff Dayside Motors, Inc. at all times from 1936 to March 1959, was an automobile dealer operating under formal written franchise agreements for the sale of Chrysler, Plymouth and Imperial automobiles within the meaning of §1E and C of said Automobile Dealer Franchise Act.

27. Defendants Chrysler Corporation and Chrysler Motors Corporation were and still are automobile manufacturers within the meaning of the said Automobile Dealers Franchise Act. Defendant Chrysler Motor Corporation has served as the agent for its parent defendant Chrysler Corporation in the designation of franchised dealers, the performance of franchises, and the termination thereof.

28. Plaintiff Dayside Motors, Inc. had a series of written contracts with defendant Chrysler Motors Corporation, the most recent of which governing the sale of Chrysler, Plymouth and Imperial cars expired on March 19, 1959. Said written contracts purported to and did fix the legal rights and liabilities of plaintiff Dayside Motors, Inc. and the Chrysler defendants in connection with the distribution, sale and servicing of Chrysler, Plymouth and Imperial vehicles and parts. Said written contracts also provided for the terms and conditions under which plaintiff Dayside Motors, Inc. could be cancelled as a franchised dealer of Chrysler, Plymouth and Imperial cars.

29. On December 19, 1955 defendant Chrysler

Motors notified plaintiff Dayside Motors, Inc. that 90 days thereafter its written franchise for sale and distribution of Chrysler, Plymouth and Imperial motor vehicles would be terminated.

30. From 1936 until the notice of termination as aforesaid, plaintiff Dayside Motors, Inc. at all times acted in good faith in respect of its obligations and duties under such franchise agreements, performed each and every condition and term of such franchise agreements on its part to be performed, and in a number of instances during such period was commended by defendant Chrysler Motors Corporation for its meritorious performance as a dealer.

31. By the discriminatory pricing practices, and the discriminatory availability of services and facilities as alleged in paragraphs 12 to 24 above, defendant Chrysler Motors Corporation made it impossible for plaintiff Dayside Motors, Inc. to sell new cars during the years 1958 and 1959 in as great a volume as it had sold theretofore.

32. Prior to its termination as a dealer, plaintiff Dayside Motors, pursuant to provisions of its written franchise agreements with the Chrysler defendants, negotiated with defendants Joseph Schneider and Lambert P. Furey, Jr. for the sale of plaintiff's franchise and lease of the premises at 204 Main Street, Hempstead, Long Island, New York, owned by plaintiffs Samuel J. Wisner, Shirley Wisner, Herman Wisner and Lawrence Wisner. Such negotiations were conducted with the knowledge and consent of the Chrysler defendants, and such sale and lease were

encouraged and approved by representatives of the Chrysler defendants. Nevertheless, prior to execution of a formal agreement between plaintiff Eyside Motors, Inc. and defendants Joseph Schneider, Lambert R. Furey, Jr. and Schneider-Furey Corporation, defendant Chrysler Motors Corporation noticed the termination of Eyside Motors' franchises, thus effectively barring Eyside Motors, Inc. from transferring its franchise to defendants, Joseph Schneider, Lambert R. Furey, Jr., Schneider-Furey Corporation or to others. Defendant Schneider-Furey Corporation was later given by defendant Chrysler Motors Corporation a Chrysler-Plymouth franchise to do the same business as was done by plaintiff Eyside Motors, Inc., in Hempstead, Long Island, New York.

33. By the practices alleged in the First and Second Claims, above, and the dealings with plaintiff Eyside Motors, Inc., in respect of the termination and transfer of its franchises, defendants Chrysler Corporation and Chrysler Motors Corporation acted in bad faith, and in an unfair and inequitable manner with respect to the terms of the franchises with plaintiff Eyside Motors Inc., and in terminating the franchises of said plaintiff.

34. By reason of the foregoing, defendants Chrysler Corporation and Chrysler Motors Corporation violated the Automobile Dealers Franchise Act, and plaintiffs are entitled to recover their damages resulting from such violation.

FOURTH CLAIM:

Against defendants Chrysler Corporation and Chrysler Motors Corporation

CLAIM FOR BREACH OF CONTRACT

35. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-10, 26, 27, 28, 29 and 30 hereof.

36. The franchise agreements between defendant Chrysler Motors Corporation and plaintiff Bayside Motors, Inc. provide that said defendant would buy, upon termination of the agreements, all cars, parts and accessories from Bayside Motors, Inc. The Chrysler defendants have breached such provisions by failing to buy parts, accessories, signs and special tools from Bayside Motors, Inc., or refusing to pay the full value for parts, accessories, signs and special tools.

37. The said franchise agreements provide that defendant Chrysler Motors Corporation will assist plaintiff Bayside Motors, Inc. in effecting an orderly and equitable disposition, by sale or lease, of the premises located at 204 Main Street, Hempstead, Long Island, which for many years plaintiff, Bayside Motors, Inc. had been using to perform its obligations under its franchise agreements. Said premises were specially improved by structures and appurtenances for an automobile sales and service organization and were peculiarly fit for such specific purpose, of which defendants Chrysler had actual knowledge. The individual plaintiffs, who own these premises, were beneficiaries of the provisions of said franchise agreements.

38. Plaintiff Bayside Motors, Inc. informed

representatives of Chrysler Motors Corporation in 1957, more than a year prior to notice of termination of its franchises, that it had undertaken negotiations with defendants Joseph Schneider and Lambert R. Furey, Jr. for the purpose of inducing defendant Schneider-Furey Corporation to purchase plaintiff's Chrysler-Plymouth franchises for \$50,000, in addition to the purchase of parts and equipment, and the assumption of a ten-year lease of the premises at 204 Main Street, Hempstead, Long Island, which were and are owned by the individual plaintiffs. Such negotiations had reached agreement by October 1, 1957, there remaining only the necessity of formally integrating the agreement into writing.

39. Plaintiffs, in negotiating the agreement with the defendants described above, relied to their detriment on the express representation of an official of Chrysler Motors Corporation that said defendant would assist plaintiffs in arranging for Schneider-Furey Corporation to succeed plaintiff Dayside Motors, Inc. as the Hempstead, Long Island, Chrysler-Plymouth-Imperial dealer at the premises then used and owned by plaintiffs for such dealerships. Notwithstanding such representations made in accordance with defendant Chrysler Corporation's contractual obligations referred to above in paragraph 37, on December 19, 1958, defendant Chrysler Motors Corporation noticed the termination of plaintiff's franchises to take effect on March 10, 1959. Shortly after such termination date, defendant Schneider-Furey Corporation was given a Chrysler-Plymouth dealership at 229 North Franklin Street, Hempstead,

a site located two city blocks from the premises used by plaintiff Bayside Motors, Inc.

40. As the result of the representations described in paragraph 39 above, and a further express representation made by a representative of defendant Chrysler Motors Corporation to the effect that he would not consider other prospective dealers until the Schneider-Furey Corporation refused the franchises, plaintiffs made no effort to dispose of such franchises and premises to other possible customers. The sequence of events, first, the negotiations with defendant Schneider-Furey Corporation as aforesaid, second, the representations made by defendant Chrysler Motors, and, third, the notice of termination of plaintiff's franchises, made it impossible for plaintiff Bayside Motors, Inc. to dispose of its franchises and for the individual plaintiffs to lease or sell their premises to other automobile dealers.

41. Had the franchises of plaintiff Bayside Motor Inc. been lawfully and in good faith terminated by defendants Chrysler, and had said defendants lawfully and in good faith entered into franchise agreements with Schneider-Furey Corp., and had defendants Chrysler thereafter in good faith proceeded to comply with the aforesaid provisions of such franchise agreements, defendants Chrysler would have required, as a condition for the issuance of franchise agreements to Schneider-Furey Corp., that the latter corporation conduct its business of selling and servicing Chrysler products at 204 Main Street,

Hempstead, L.I., through either purchase or lease from plaintiffs of said premises, since in this manner defendants Chrysler would have complied with the requirement of said franchise agreements that it would assist plaintiffs in effecting an orderly and equitable disposition, by sale or lease, of said premises. Instead, and illegally, in bad faith, and in violation of said franchise agreements, defendants Chrysler, permitted the franchises theretofore enjoyed by plaintiff Dayside Motors Inc. to be moved by defendant Schneider-Furey Corp., into premises in Hempstead two blocks away from the premises at 264 Main Street, which premises had theretofore been maintained by Schneider-Furey Corp. as a Dodge sales and service establishment; and defendants Chrysler further permitted defendant Schneider-Furey Corp., to remove its Dodge franchise and sales business to another location in Hempstead in the immediate vicinity, into premises consisting of a store having no service facilities or other appurtenances customary in automobile sales and servicing.

42. The Court has jurisdiction over the fourth claim of action through the statutory basis of diversity of citizenship, 28 U.S.C. §1332, as well as the judicial concept of pendant jurisdiction. The underlying jurisdictional allegations for this claim are found in paragraphs 2-6 above.

FIFTH CLAIM: Against All Defendants.

CONSPIRACY IN VIOLATION OF SECTION 2

OF THE AUTOMOBILE DEALER FRANCHISE ACT,

70 STAT. 1125, AND SECTION 1 OF THE
SHERMAN ACT, 15, U.S.C. 51.

43. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-11, 25-41 above.

44. Beginning sometime during the year 1953 defendants Chrysler Corporation, Chrysler Motors Corporation, and Schneider-Furey Corporation, Joseph Schneider and Lambert R. Furey, Jr. entered into and continuously thereafter and now are engaged in a combination and conspiracy to violate the Automobile Dealers Franchise Act and to restrain trade and commerce in Chrysler automotive products, and all of the defendants have been and are now parties to agreements, understandings and contracts in restraint of such trade and commerce in violation of Section 1 of the Sherman Act.

45. Such unlawful combination and conspiracy has consisted of continuing agreement and concert of action between the defendants to exclude and foreclose plaintiff Dayside Motors, Inc. from selling Chrysler automotive products, the terms of which have been (a) that defendant Chrysler Motors Corporation would terminate the franchises of the plaintiff Dayside Motors, Inc. for the sale of Chrysler automotive products, (b) that the defendant Schneider-Furey Corporation would be given exclusive Chrysler-Plymouth franchises for the sale of Chrysler automotive products in the Hempstead, Long Island area, and (c) that the defendant Schneider-Furey Corporation would be enabled to operate such franchises without the necessity

of purchasing the automobile franchises and good will of plaintiff Dayside Motors, Inc. and of leasing or purchasing the real estate owned by the individual plaintiffs at 204 Main Street, Hempstead, Long Island, New York, and (d) that defendant Chrysler Motors Corporation would not discharge in good faith its obligations under its franchise agreements with plaintiff Dayside Motors, Inc. Defendants have done the things they agreed to do.

46. The aforesaid combination and conspiracy and the aforesaid agreements have had, as intended by the defendants, the following effects: (a) the plaintiff Dayside Motors, Inc. has been foreclosed from further dealing in Chrysler automotive products, (b) the value of the said real estate at 204 Main Street, Hempstead, Long Island, which was constructed, improved and maintained as premises suitable for the sale and servicing of Chrysler automotive products, has been vastly depreciated, (c) plaintiff Dayside Motors, Inc. was deprived of its contractual right to realize the value of its Chrysler-Plymouth franchises by sale to a succeeding dealer in interest, upon the termination of its franchises, and (d) the public has been deprived of access to business dealings with a reputable and well established Chrysler-Plymouth-Imperial automobile dealer and service organization.

SIXTH CLAIM: Against Defendants Schneider-Perry Corporation, Joseph Schneider and Robert M. Perry, Jr.

FURTHER VIOLATION OF BREACH OF CONTRACT

47. Plaintiff repeat and reallege the allegations set forth in paragraphs 1-11, 26-29, 32-33, 35-41.

48. Defendants Schneider-Furey Corporation, Joseph Schneider and Lambert R. Furey, Jr. for more than a year prior to December 19, 1958, had knowledge of the existence of the dealer franchise contracts aforesaid between defendant Chrysler Motors Corporation and plaintiff Bayside Motors, Inc., and of the provisions thereof having to do with the transfer of the Bayside franchises. All defendants during this time also had knowledge of the ownership by the plaintiffs of the premises at 254 Main Street, Hempstead, Long Island, as well as the use to which such premises had been put in the past and the desirability of their future use as the situs for an automobile dealership.

49. Possessing the knowledge pleaded in paragraph 48 above, defendants Joseph Schneider, Lambert R. Furey, Jr. and Schneider-Furey Corporation entered into negotiations with plaintiff Bayside Motors, Inc., looking towards the acquisition of plaintiffs Chrysler, Plymouth and Imperial automobile franchises.

50. The negotiations described in paragraph 49 above reached full agreement by October 1, 1958, there remaining only the necessity of integrating such agreement into writing and executing it. At or after this time defendants Schneider and Furey approached representatives of defendant Chrysler Motors Corporation in order to induce the Chrysler defendants to designate Schneider-Furey Corporation as the Chrysler-Plymouth dealer in Hempstead with-

out necessity for the purchase of the franchises from plaintiff and without obligation to lease the premises at 204 Main Street, Hempstead, Long Island.

31. The defendant Chrysler Motors Corporation complied with the requests of defendants Schneider and Furey, terminating plaintiff's franchises and thereafter designating Schneider-Furey Corporation as a Chrysler-Plymouth franchised dealer at a location within several city blocks of 204 Main Street, Hempstead, Long Island, the place of business of the plaintiff Bayside Motors, Inc.

32. By reason of the foregoing defendants Schneider-Furey Corporation, Joseph Schneider and Lambert R. Furey, Jr. tortiously induced defendant Chrysler Motors Corporation to breach its contracts with plaintiff, Bayside Motors, Inc. and the plaintiffs are entitled to recover their damages resulting from such tortious inducement to breach a contract with a third person.

PRAYER

33. Plaintiffs pray that the Chrysler defendants be enjoined from continuing the unfranchisement of others as Chrysler, Plymouth or Imperial dealers within the Village of Hempstead, Long Island, New York, and be affirmatively required to reinstate plaintiff Bayside Motors, Inc. as the franchised dealer for Chrysler, Plymouth and Imperial automobiles, parts and services for Hempstead, Long Island, and be enjoined from terminating in future the franchises of plaintiff Bayside Motors, Inc. unless good cause for doing so is shown to the satisfaction of the

Court.

PANACLS

54. As a result of the violations set forth in the first claim, plaintiff Bayside Motors, Inc. has suffered damages in the amount of \$100,000 before trebling, and the individual plaintiffs have suffered damages in the amount of \$50,000 before trebling.

55. As a result of the violations of law set forth in the second claim, plaintiff Bayside Motors, Inc. has suffered damage to the amount of \$50,000 before trebling, representing profit it would have made if defendant Chrysler Motors Corporation had made available to it the same service and facilities made available to its favored customers, and the further sum of \$50,000 before trebling, representing the loss of good will and business resulting from the sale by the favored dealers in the immediate neighborhood of plaintiff's dealership of Chrysler vehicles at low prices with the resultant subtraction of patronage from plaintiff Bayside Motors, Inc. for all purposes.

56. As a result of the violations of law set forth in the third claim, plaintiff Bayside Motors, Inc. has suffered damage in the sum of \$100,000, representing the single damages caused by the Chrysler defendants' bad faith termination of plaintiff Bayside Motors, Inc.'s franchises including the reasonably expectable profits from the continuation of such franchises, and single damages in the amount of \$50,000, resulting from plaintiffs' inability to dispose of their franchises and real estate

located at 234 Main Street, Hempstead, Long Island, which could have profitably been disposed of or leased but for the bad-faith termination of said franchises.

57. As the result of the violations of law and of the breach of contract set forth in the fourth claim, plaintiff Dayside Motors, Inc. and the individual plaintiffs, as owners of the real estate of 234 Main Street, Hempstead, Long Island, New York, are entitled to single damages in the gross amount of \$75,000.

58. As the result of the violations of law set forth in the fifth claim, the plaintiffs are entitled to damages in the gross amount before trebling, of \$100,000.

59. As a result of the violations of law set forth in the sixth claim the plaintiffs are entitled to damages in the amount of \$100,000.

WHEREFORE, plaintiffs demand judgment as follows:

(a) on the first claim against Chrysler Motors Corporation, treble the amount of its damages, or \$450,000, together with reasonable attorneys' fees, (b) on the second claim against defendant Chrysler Motors Corporation treble the amount of its damages, or \$300,000, together with reasonable attorneys' fees, (c) on the third claim against the defendants Chrysler Motors Corporation and Chrysler Corporation, for \$150,000, together with reasonable attorneys' fees, (d) on the fourth claim against defendants Chrysler Motors Corporation and Chrysler Corporation, for \$75,000, together with reasonable attorneys' fees, and (e) on the fifth claim against defendants Chrysler Corporation, Chrysler

Motors Corporation, Schneider-Furey Corporation, Joseph Schneider and Lambert R. Furey, Jr., treble the amount of its damages, or \$300,000, together with reasonable attorneys' fees, and (5) on the sixth claim against defendants Schneider-Furey Corporation, Joseph Schneider and Lambert R. Furey, Jr. for \$100,000, together with reasonable attorneys' fees; all with interest and the costs and disbursements of this action.

Dated, March 20th, 1961, New York, New York

WEISBERG & EPSTEIN

By Bernard E. Epstein
 BERNARD E. EPSTEIN, a
 partner
 Attorneys for Plaintiffs
 15 William Street
 New York 5, New York



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF NEW YORK

----- x
BAYCIDE MOTORS, INC., SAMUEL J.
WISNER, GEORGE WISNER, NORMAN
WISNER, LAWRENCE WISNER,

Plaintiffs,

- against -

CHRYSLER CORPORATION, CHRYSLER
FINANCIAL CORPORATION, SCHLIMMER-FURLEY
CORPORATION, JOSEPH SCHLIMMER and
LESLIE H. FURLEY, JR.,

Defendants.
----- x

Civil Action
File No. 1004/1011

ANSWER

Defendant Chrysler Corporation by its attorneys,
Kelley Brye Newhall & Maginnis, as and for its answer to
the complaint herein:

FIRST: Denies each and every allegation contained
in paragraphs "1", "2", "10", "31", "32", "33", "34", "35",
"40", "41", "42", "44", "45", "46", "53", "54", "55", "56",
"57", "58", and "59".

SECOND: Denies that it has knowledge or informa-
tion sufficient to form a belief as to the allegations
contained in paragraph "4".

THIRD: Denies each and every allegation contained
in paragraphs "5", "6", "8", and "27", except it admits that
it is a corporation organized under the laws of the State
of Delaware, maintaining its principal offices in Detroit,
Michigan, that it maintains an office in the Chrysler
Building, in the Borough of Manhattan and City and State of

New York, that it is engaged in the business, among others, of manufacturing automobiles, other vehicles and automotive parts and accessories in the State of Michigan, which are distributed and sold throughout the United States and many other parts of the world, and that it is the third largest manufacturer of automotive vehicles and parts in the United States; and that defendant Chrysler Motors Corporation is a corporation organized under the laws of the State of Delaware, that it is a wholly owned subsidiary of defendant Chrysler Corporation, maintaining its principal offices in Detroit, Michigan, that it maintains regional offices for the various models of automotive vehicles it sells in Rye, New York, that it is engaged in the business, among others, of selling automobiles, other vehicles and automotive parts manufactured by defendant Chrysler Corporation to many hundreds of dealers throughout the United States.

FOURTH: Denies that it has knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "3", "11", and "25", except that it admits that it, defendant Chrysler Motors Corporation, and defendant's Chrysler Motors Corporation predecessor were parties to agreements with plaintiff Dayside Motors, Inc. regarding the purchase and sale and servicing of Plymouth, Chrysler, and Imperial automobiles from 1938 to March 22, 1950, that said plaintiff maintained and operated a place of business for about four years in Dayside, Long Island, New York and, from 1938 until March, 1950, at 124 Main Street, Village of Hempstead, County of Nassau, State of New York.

FIFTH: Denies that it has knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "7" and "9", except that it admits that defendant Chrysler Motors Corporation is a party to agreements for the purchase and sale and servicing of Chrysler and Plymouth automobiles with defendant Schneider-Purey Corporation, that defendant Schneider-Purey Corporation maintains a place of business at 229 North Franklin Street, Village of Hempstead, County of Nassau, State of New York, and that since on or about April of 1959 said defendant has been operating at said address, selling vehicles produced by it.

SIXTH: Denies each and every allegation contained in paragraph "12", except that it admits that agreements regarding the purchase and sale and servicing of Plymouth, Chrysler, and Imperial automobiles were in effect between defendant Chrysler Motors Corporation and plaintiff Bayside Motors, Inc. and that plaintiff purchased Plymouth, Chrysler, and Imperial automobiles from it at the factory wholesale prices then currently in effect, as set forth on said defendant's then current dealer price lists.

SEVENTH: Denies each and every allegation contained in paragraphs "28", "35", and "37", except that it admits that there were a number of agreements in writing between defendant Chrysler Motors Corporation and plaintiff Bayside Motors, Inc., the most recent of which expired on March 19, 1959, and respectfully refers the Court to such agreements, which will be adduced upon the trial herein for

a full and complete statement of the legal rights and obligations thereunder of the parties thereto, and that the premises at 214 Main Street, Village of Hempstead, County of Nassau, State of New York, were being used by plaintiff Layside Motors, Inc. for the purpose of selling and servicing automobiles on the date that such agreements were terminated.

EIGHTH: Denies each and every allegation contained in paragraph "29", except that it admits that defendant Chrysler Motors Corporation, on or about December 19, 1955, by certified mail, and in conformity with the termination procedure contained in the Chrysler and Plymouth, and Imperial direct dealer agreements then in existence between said defendant and plaintiff Layside Motors, Inc., notified said plaintiff in writing that said direct dealer agreements would be terminated 90 days after the receipt of such notification.

NINTH: Denies each and every allegation contained in paragraph "30", and specifically denies that the conditions contained in paragraph "21", sub-paragraphs "b", "c", "d", and "e", and paragraph "23" of the direct dealer agreements in effect at the time of termination were performed.

TENTH: Denies each and every allegation in paragraph "31", except as hereinabove admitted in paragraphs FIFTH and EIGHTH.

FOR A FIRST DEFENSE

ELEVENTH: The complaint fails to state a claim against defendant Chrysler Corporation upon which relief can be granted.

FOR A THIRD DEFENSE

THIRTEEN: Said Automobile Dealers Franchise Act on its face and as it is sought to be applied herein is illegal, unconstitutional, and void in that it is incapable of being complied with due to the vagueness and uncertainty of the language contained therein; in that it is arbitrary and discriminates against a class of persons, of which defendant Chrysler Corporation is a member; in that it purports to deprive a class of persons, of which said defendant is a member, of property without due process of law; in that it purports to confer a right to damages against a manufacturer by the exercise of its contractual rights; in that it purports to impair the obligation of contracts; in that it impairs the manufacturers' free choice of dealers and interferes with the conduct of their business; in that it purports to authorize the taking of property without just compensation; in that it purports to confer upon Federal Courts the power to judge contracts made under State law in cases where there is no diversity of citizenship; and in that it violates Article III and the Fifth Amendment of the Constitution of the United States.

FOR A THIRD DEFENSE

THIRTEENTH: This Court does not have jurisdiction of any rights of action that may be set forth in paragraphs "29" through, and including, "34", and paragraphs "43" through, and including, "46" of the complaint, and no such right of action exists since the matters complained of occurred more than three years next before the commencement of this action.

FOR A FOURTH DEFENSE

FOURTEENTH: Any rights of action that may be set forth in paragraphs "25" through, and including, "34" and paragraphs "43" through, and including, "46" of the complaint did not accrue three years next before the commencement of this action.

FOR A FIFTH DEFENSE

FIFTEENTH: Any rights of action that may be set forth in paragraphs "43" through, and including, "46" of the complaint did not accrue four years next before the commencement of this action.

FOR A SIXTH DEFENSE

SIXTEENTH: Plaintiff Elysides Motors, Inc. failed to act in good faith within the meaning of Section 1(e) of the Automobile Dealer Franchise Act, 70 Stat 1125, United States Code, Title 15, § 1221(e).

WHEREFORE defendant Chrysler Corporation demands judgment dismissing the complaint as to it together with the costs and disbursements of this action.

Dated: October 18, 1961

KELLEY DRYE NEWHALL & MAGINNES
350 Park Avenue
New York 22, New York

By s / FRANCIS S. BENNETT
Attorney

Attorneys for Defendant
Chrysler Corporation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF NEW YORK

-----X
BAYSIDE MOTORS, INC., SAMUEL J.
WISNIE, GABRIEL WISNIE, NORMAN
WISNIE, LAWRENCE WISNIE,

Civil Action

File No.
1094/1961

Plaintiffs,

- against -

ANSWER

CHRYSLER CORPORATION, CHRYSLER
MOTOR CORPORATION, SCHLIERER-TUREY
CORPORATION, JARATH SCHLIERER and
LAWRENCE R. TUREY, JR.,

Defendants.

-----X
Defendant, Chrysler Motors Corporation by its
attorneys, Kelley Drye Newhall & Maginnes, as and for its
answer to the complaint herein:

FIRST: Denies each and every allegation con-
tained in paragraphs "1", "2", "10", "13", "14", "15",
"16", "17", "18", "21", "22", "23", "24", "31", "32", "33",
"34", "33", "40", "41", "42", "44", "45", "46", "53", "54",
"55", "56", "57", "58", and "59".

SECOND: Denies that it has knowledge or infor-
mation sufficient to form a belief as to the allegations
contained in paragraph "4".

THIRD: Denies each and every allegation con-
tained in paragraphs "5", "6", "8" and "21", except it
admits that it is a corporation organized under the laws

of the State of Delaware, that it is a wholly-owned subsidiary of defendant Chrysler Corporation, that it maintains its principal office in Detroit, Michigan, that it maintains regional offices for the various models of automotive vehicles it sells in R/c, New York, that it is engaged in the business, among others, of selling automobiles, other vehicles and automotive parts manufactured by defendant Chrysler Corporation to many hundreds of dealers throughout the United States, and that defendant Chrysler Corporation is a corporation organized under the laws of the State of Delaware, that said defendant maintains its principal offices in Detroit, Michigan, that said defendant maintains an office in the Chrysler Building, in the Borough of Manhattan, and City and State of New York, that said defendant is engaged in the business, among others, of manufacturing automobiles, other vehicles and parts and accessories, in the State of Michigan, which are distributed and sold throughout the United States and many other parts of the world, and that said defendant is the third largest manufacturer of automotive vehicles and parts in the United States.

FOURTH: Denies that it has knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "3", "11" and "26", except that it admits that it, its predecessor, and defendant Chrysler Corporation were parties to agreements with plaintiff Dayside Motors, Inc. regarding the purchase and sale,

and servicing, of Plymouth, Chrysler and Imperial automobiles from 1933 to March 22, 1959, that said plaintiff maintained and operated a place of business for about four years in Bayside, New York, and, from 1933 until March, 1959 at 234 Main Street, Village of Hempstead, County of Nassau, State of New York.

FIFTH: Denies that it has knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "7" and "9", except that it admits that it is a party to agreements for the purchase and sale and servicing of Chrysler and Plymouth automobiles with defendant Schneider-Furey Corporation, that said defendant maintains a place of business at 229 North Franklin Street, Village of Hempstead, County of Nassau, State of New York, and that since on or about April of 1959 said defendant has been operating at said address, selling vehicles produced by defendant Chrysler Corporation.

SIXTH: Denies each and every allegation contained in paragraph "12", except that it admits that agreements regarding the purchase and sale and servicing of Plymouth, Chrysler, and Imperial automobiles were in effect between it and plaintiff Bayside Motors, Inc. and that plaintiff purchased Plymouth, Chrysler, and Imperial automobiles from it at the factory wholesale prices then currently in effect, as set forth on said defendant's then current dealer price lists.

SEVENTH: Denies each and every allegation contained in paragraphs "23", "36", and "37", except that it admits that there were a number of agreements in writing between it and plaintiff Bayside Motors, Inc., the most

recent of which expired on March 19, 1959 and respectfully refers the court to such agreements, which will be adduced upon the trial herein for a full and complete statement of the legal rights and obligations thereunder of the parties thereto, and that the premises at 234 Main Street, Village of Hempstead, County of Nassau, State of New York, were being used by plaintiff Dayside Motors, Inc. for the purpose of selling and servicing automobiles on the date that such agreements were terminated.

EIGHTH: Denies each and every allegation contained in paragraph "29", except that it admits that it, on or about December 19, 1958, by certified mail, and in conformity with the termination procedure contained in the Chrysler and Plymouth, and Imperial direct dealer agreements then in existence between it and plaintiff Dayside Motors, Inc., notified said plaintiff in writing that said direct dealer agreements would be terminated 90 days after the receipt of such notification.

NINTH: Denies each and every allegation contained in paragraph "30", and specifically denies that the conditions contained in paragraph "21", sub-paragraphs "b", "c", "d" and "e", and paragraph "23" of the direct dealer agreements in effect at the time of termination were performed.

TENTH: Denies each and every allegation in paragraph "39", except as hereinabove admitted in paragraphs FIFTH and EIGHTH.

FOR A FIRST DEFENSE

ELEVENTH: The complaint fails to state a claim against defendant Chrysler Motors Corporation upon which relief can be granted.

FOR A SECOND DEFENSE

TWELFTH: Said Automobile Dealers Franchise Act on its face and as it is sought to be applied herein is illegal, unconstitutional, and void in that it is incapable of being complied with due to the vagueness and uncertainty of the language contained therein; in that it is arbitrary and discriminates against a class of persons, of which defendant Chrysler Motors Corporation is a member; in that it purports to deprive a class of persons, of which said defendant is a member, of property without due process of law; in that it purports to confer a right to damages against a manufacturer by the exercise of its contractual rights; in that it purports to impair the obligation of contracts; in that it impairs the manufacturers free choice of dealers and interferes with the conduct of their business; in that it purports to authorize the taking of property without just compensation; in that it purports to confer upon Federal Courts the power to judge contracts made under State law in cases where there is no diversity of citizenship; and in that it violates Article III and the Fifth Amendment of the Constitution of the United States.

FOR A THIRD DEFENSE

THIRTEENTH: This Court does not have jurisdiction of any rights of action that may be set forth in paragraphs "25" through, and including, "34", and paragraphs "43" through, and including, "46" of the complaint, and no such right of action exists since the matters complained occurred more than three years next before the commencement of this action.

FOR A FOURTH DEFENSE

FOURTEENTH: Any rights of action that may be set forth in paragraphs "25" through, and including, "34" and paragraphs "43" through, and including, "45", of the complaint did not accrue three years next before the commencement of this action.

FOR A FIFTH DEFENSE

FIFTEENTH: Any rights of action that may be set forth in paragraphs "43" through, and including, "45" of the complaint did not accrue four years next before the commencement of this action.

FOR A SIXTH DEFENSE

SIXTEENTH: Plaintiff Bayside Motors, Inc. failed to act in good faith within the meaning of Section 1(c) of the Automobile Dealer Franchise Act. 70 Stat 1125, United States Code, Title 15, § 1221(o).

WHEREFORE defendant Chrysler Motors Corporation demands judgment dismissing the complaint as to it together with the costs and disbursements of this action.

Dated: October 18, 1961

KELLEY DYE HENHALL & MAGUIRE
350 Park Avenue
New York 22, New York

By s / FRANCIS S. BENNETT
A. BENNETT

Attorneys for Defendant
Chrysler Motors Corporation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x	
LONG ISLAND MOTORS, INC.,	:
JAMES F. WATERS, INC. and	:
ASHDOWN MOTOR SALES, INC.,	:
	: <u>COMPLAINT</u>
Plaintiffs,	: Civil Action
	: 66 Civ.
-against-	:
CHRYSLER MOTORS CORPORATION	:
and CHRYSLER CORPORATION,	:
	: PLAINTIFFS DEMAND
	: A JURY TRIAL
Defendants.	:
----- x	

Plaintiffs Long Island Motors, Inc., James F. Waters, Inc. and Ashdown Motor Sales, Inc. (hereafter respectively referred to as "Long Island," "Waters" and "Ashdown"), by their attorney, Alexander Hammond, complaining of defendants, allege:

1. Long Island is a corporation incorporated under the laws of the State of New York, which had its principal place of business in the Borough of Queens in the City and State of New York. Long Island was dissolved by voluntary action of its shareholders and is authorized by the laws of the State of New York to sue in all courts in its corporate name.

2. Waters is a corporation incorporated under the laws of the State of New York, which had its principal place of business in the Borough of Queens in the City and State of New York. Waters was dissolved by voluntary action of its shareholders and is authorized by the laws of the State of New York to sue in all courts in its corporate name.

3. Ashdown is a corporation incorporated under the laws of the State of New York, which had its principal place of business in the Borough of Queens in the City and State of New York. Ashdown was dissolved by voluntary action of its shareholders and is authorized by the laws of the State of New York to sue in all courts in its corporate name.

4. Defendants Chrysler Motors Corporation and Chrysler Corporation (hereafter respectively referred to as "Chrysler Motors" and "Chrysler") are corporations incorporated in the State of Delaware, having their principal place of business in a State other than the State of New York. Chrysler Motors and Chrysler are authorized to do business in the State of New York. Chrysler Motors and Chrysler have agents, transact business and are found within the Southern District of New York.

5. Chrysler Motors is a wholly owned subsidiary of Chrysler and acts for and is under its control. Chrysler Motors acts as Chrysler's sole agency and instrumentality for the enfranchisement of automobile dealers throughout the United States and for the sale to them of cars and other automotive products manufactured by Chrysler.

6. Plaintiffs herein join in this action as they assert rights to relief, severally, in respect of or arising out of the same series of transactions or occurrences, involving common questions of law and fact.

7. This action is brought under Sections 2(a), 2(d) and 2(e) of the Clayton Act, as amended by the Robinson-Patman Act (15 U.S.C., Secs. 13 (a), (d) and (e)). Jurisdiction is also based upon the diversity of citizenship of the parties (28 U.S.C., Sec. 1332). The matter in controversy as to each plaintiff and as to each of their causes of action exceeds, exclusive of interest and costs, the sum of \$10,000.00.

AS AND FOR A FIRST CAUSE OF ACTION FOR LONG ISLAND

8. Plaintiff Long Island repeats and realleges all of the allegations set forth in paragraphs 1, and 4 through 7 of this complaint. All uses of the term "plaintiffs" in paragraphs 11, and 16 through 21 herein shall be deemed to refer specifically to plaintiff Long Island for the purposes of this cause of action.

9. In 1944, Long Island's predecessor corporation became an authorized dealer for the sale of the De Soto and Plymouth makes of cars and for the sale of De Soto, Plymouth, Dodge and Chrysler parts, accessories and supplies. Plaintiff Long Island entered into sales agreements with Chrysler Motors covering the aforesaid products on or around September 4, 1956, on May 20, 1957 and on February 8, 1960. Such products were manufactured by Chrysler and sold by Chrysler Motors.

10. Plaintiff Long Island engaged in business as a De Soto dealer from around September 1, 1956 to around December of 1960, and as a Plymouth dealer from around September 1, 1956 to around June 30, 1962. Chrysler Motors sold and Long Island purchased De Soto and Plymouth make cars and De Soto, Plymouth, Dodge and Chrysler parts, accessories and supplies for resale to Long Island's customers. These customers resided, were employed, or did business in New York City, Nassau, Suffolk and Westchester Counties, throughout other areas in greater New York Metropolitan area, and elsewhere.

11. Beginning at least as early as 1955 and continuing until after 1963, both Chrysler Motors and Chrysler and their agents paid, granted, accorded or furnished, directly or indirectly, to certain favored dealers discriminatory and unlawful: (a) prices, payments, allowances, rebates and bonuses; (b) payments and other things of value to or for the benefit of such favored dealers for services or facilities furnished by or through such favored dealers; and (c) services and facilities. Defendants' discriminatory practices are more particularly set forth in paragraphs 12, 13 and 14, and the items therein described are described inclusively but not exclusively of others. Such items were not made available to plaintiffs and were fraudulently concealed from plaintiffs.

12. The discriminatory and unlawful practices included: bonuses, prizes, awards and other payments to the favored dealers and their personnel in connection with sales programs and contests based upon unfair and discriminatory quotas; rebates, refunds, allowances and other payments to the favored dealers; fleet, leasing and other allowances and rebates to the favored dealers or to their customers, including fleet, taxi, leasing, rental, public agency and other customers; the sale of new cars at prices and terms not available to non-favored dealers; the purchase of used trade-ins by defendants or their agents from the favored dealers or from their customers at prices higher than the fair market value of such cars; payments to the favored dealers or their customers in connection with guaranteed market value or guaranteed trade-in value of used cars; and favorable prices, terms and conditions in the purchase of parts, accessories and other products for De Soto, Plymouth, Dodge and Chrysler cars.

13. The discriminatory and unlawful practices included the payment or the contracting for the payment of money and other things of value to or for the benefit of the favored dealers with respect to : rent; sales, service and parts facilities; signs, advertising and promotion; service and warranty procedures, including special payments for parts and labor and extended warranty periods; loans and guarantee of loans; free floor plans or loans without interest; the cancellation or forgiveness of indebtedness or loans, with or without the further extension of loans or other credit; and the purchase of trade-ins or payments with respect to the guaranteed value of trade-ins, as set forth in paragraph 12.

14. The discriminatory and unlawful practices included contracting to furnish, or furnishing, or contributing to the furnishing of: new car preparation services, warranty and repair services, service station facilities, parts facilities, showroom facilities and other services and facilities.

15. On information and belief, among the favored competing dealers who received or may have received some of the aforesaid benefits and privileges were Herbert S. Faris, Inc., Chrysler Manhattan Chrysler Corporation, Mannion Dodge, Inc., Burke Dodge, Inc., Future Motors, Inc., Airport Motors, Inc., Stanley S. Kilburn, Inc. and other dealers whose identities have been concealed by defendants.

16. Beginning around 1956, defendants sold Plymouth cars and other automotive products to retail customers through wholly^{owned} corporate subsidiaries and/or through a retail sales branch operated on Broadway, New York, New York. In some sales to retail customers (a) the cash sales price paid by the customer was lower than the sales price charged by Chrysler Motors to plaintiffs and other dealers; and in other sales (b) the amounts received upon the resale of the used car traded-in plus the cash paid by the customer constituted a sales price lower than that charged by Chrysler Motors to plaintiffs and other dealers. In other further sales to retail customers, the sales price to plaintiffs and other dealers plus the cost of preparing new cars for delivery, as charged by Chrysler Motors or its agents to its dealers, was less than the price received from retail customers as described in (a) or (b) above. All of the above sales were made at prices which were discriminatory, unlawful and predatory.

17. The cars, accessories, parts and other products sold to plaintiffs and to the favored competitors were of like grade and quality. Chrysler Motors and Chrysler are engaged in interstate commerce and the sales were made by them in the course of such commerce for use or resale in the United States. The effect of the aforesaid acts of discrimination may be substantially to lessen competition, or tend to create a monopoly in a line of commerce, or to injure, destroy, or prevent competition with

those persons receiving the benefit of such discrimination, or with their customers, all in violation of Sec. 2 (a) of the Clayton Act, as amended.

18. Defendants made the payments or contracted for the payment of things of value, as aforesaid, to or for the benefit of favored dealers in the course of commerce as compensation or in consideration for services or facilities furnished by or through such favored dealers in connection with the servicing, handling, sale or offering for sale of products manufactured or sold by defendants. Such payments or consideration were not made available on proportionally equal terms to plaintiffs who competed with the favored dealers in the sale of the aforesaid products, all in violation of Section 2(d) of the Clayton Act, as amended.

19. Defendants discriminated in favor of the favored dealers against plaintiffs by contracting to furnish, by furnishing, or by contributing to the furnishing of, the aforesaid services and facilities for the use and benefit of the favored dealers. Such services and facilities were connected with the servicing, handling, sale, or offering for sale of the aforesaid defendants' products. Such products were sold to the favored dealers upon terms not accorded to plaintiffs and other dealers on proportionately equal terms, all in violation of Section 2(e) of the Clayton Act, as amended.

20. From and after the time of commencement of the preferential and discriminatory acts and practices hereinabove described, Chrysler Motors and Chrysler actively, wrongfully, and fraudulently concealed their existence. In order to extend illegal prices, subsidies, payments, services and facilities, defendants disguised and concealed their unlawful conduct and utilized the means and methods hereinabove described. At all times, defendants' representatives maintained absolute secrecy concerning the

discriminatory practices and denied their existence. Defendants actively and wrongfully attempted to conceal and succeeded in concealing their illegal conduct and the above-described items of discriminatory dealing from plaintiffs. Defendants fraudulently represented to plaintiffs and other dealers that they were not giving discriminatory and preferential treatment to any dealer.

21. By means of fraudulent denials, the use of various indirect devices and practices and the active concealment of their wrongful conduct, defendants fraudulently concealed the existence of plaintiffs' causes of action under Sections 2 (a), 2 (d) and 2 (e) of the Clayton Act. The aforesaid acts of concealment prevented plaintiffs, by the exercise of reasonable diligence, from learning of defendants' illegal conduct. Plaintiffs were not informed of the illegal activities of defendants until sometime in September of 1966.

22. As a result of defendants' illegal discriminatory acts and their fraudulent concealment thereof, plaintiff Long Island seeks damages from around September 1, 1956 to the cessation of Long Island's business activities around June 30, 1962. Under applicable law, plaintiff Long Island claims damages for such period.

23. Plaintiff Long Island brings this cause of action under Section 4 of the Clayton Act for lawful damages and for loss of profit and injuries suffered to its business and property as a direct and proximate result of defendants' unlawful activities in the sum of \$350,000.

AS AND FOR A FIRST CAUSE OF ACTION FOR WATERS

24. Plaintiff Waters repeats and realleges all of the allegations set forth in paragraphs 2, 4 through 7, and 11 through 21 of this complaint. All uses of the term "plaintiffs" in paragraphs 11, and 16 through 21 shall be deemed to refer specifically to plaintiff Waters for the purposes of this cause of action.

25. Waters' predecessor corporation became an authorized dealer around 1936 for the sale of the De Soto and Plymouth makes of cars and for the sale of De Soto, Plymouth, Dodge and Chrysler parts, accessories and supplies. Plaintiff Waters entered into sales agreements with Chrysler Motors covering the aforesaid products on June 17, 1958. Such products were manufactured by Chrysler and sold by Chrysler Motors.

26. Plaintiff Waters engaged in business as a De Soto dealer from June 17, 1958 to around December of 1960, and as a Plymouth dealer from June 17, 1958 to around June 30, 1962. Chrysler Motors sold and Waters purchased De Soto and Plymouth makes of cars and De Soto, Plymouth, Dodge and Chrysler parts, accessories and supplies for resale to Waters' customers. These customers resided, were employed, or did business in New York City, Nassau, Suffolk and Westchester Counties, throughout other areas in the greater New York Metropolitan area and elsewhere.

27. As a result of defendants' illegal discriminatory acts and their fraudulent concealment thereof, plaintiff Waters seeks damages from June 17, 1958 to the cessation of Waters' business activities around June 30, 1962. Under applicable law, plaintiff Waters claims damages for such period.

28. Plaintiff Waters brings this cause of action under Section 4 of the Clayton Act for lawful damages and for loss of profit and injuries suffered to its business and property as a direct and proximate result of defendants' unlawful activities in the sum of \$250,000.

AS AND FOR A FIRST CAUSE OF ACTION FOR ASHDOWN

29. Plaintiff Ashdown repeats and realleges all of the allegations set forth in paragraphs 3 through 7, and 11 through 21 of this complaint. All uses of the term "plaintiffs" in paragraphs 11, and 16 through 21 shall be deemed to refer specifically to plaintiff Ashdown for the purposes of this cause of action.

30. In 1936 Ashdown became an authorized dealer for the sale of the De Soto and Plymouth makes of cars and for the sale of De Soto, Plymouth, Dodge and Chrysler parts, accessories and supplies. Ashdown entered into a new agreement with Chrysler Motors covering the aforesaid products on May 27, 1957. Such products were manufactured by Chrysler and sold by Chrysler Motors.

31. Ashdown engaged in business as a De Soto dealer from 1936 to around December of 1960 and as a Plymouth dealer from 1936 to around July of 1962. Chrysler Motors sold and Ashdown purchased the De Soto and Plymouth makes of cars and De Soto, Plymouth, Dodge and Chrysler parts, accessories and supplies for resale to Ashdown's customers. These customers resided, were employed, or did business in New York City, Nassau, Suffolk and Westchester Counties, throughout other areas in the greater New York Metropolitan area and elsewhere.

32. As a result of defendants' illegal discriminatory acts and their fraudulent concealment thereof, plaintiff Ashdown seeks damages from sometime around 1955 to the cessation of Ashdown's business activities around July of 1962. Under applicable law, plaintiff Ashdown claims damages for such period.

33. Plaintiff Ashdown brings this cause of action under Section 4 of the Clayton Act for lawful damages and for loss of profit and injuries suffered to its business and property as a direct and proximate result of defendants' unlawful activities in the sum of \$350,000.

AS AND FOR A SECOND CAUSE OF ACTION FOR LONG ISLAND

34. Plaintiff Long Island repeats and realleges all of the allegations set forth in paragraphs 1, 4 through 7, and 9 through 21 of this complaint. All uses of the term "plaintiffs" in paragraphs 11, 16 through 21, and 38 through 48 shall be deemed to refer specifically to plaintiff Long Island for the purposes of this cause of action.

35. Plaintiff Long Island and Chrysler Motors, for good and valuable consideration entered into a form "De Soto Direct Dealer Agreement," dated February 8, 1960, which superseded a similar De Soto Direct Dealer Agreement, dated May 20, 1957. The new agreement, as well as the previous agreement, incorporated the form "De Soto Direct Dealer Agreement Terms and Provisions," marked "Form 57-DS." In this agreement, Chrysler Motors agreed to sell and Long Island agreed to purchase De Soto cars, parts and accessories at regular dealer prices. In addition to the aforesaid De Soto agreement, plaintiff Long Island and Chrysler Motors entered into two other separate agreements covering the Plymouth make of cars and the Valiant make of cars.

36. Plaintiff Long Island complied with the terms and provisions of the said De Soto agreement and duly performed its duties and obligations.

37. Plaintiff Long Island's De Soto agreement was a perpetual agreement. In paragraph 21 Chrysler reserved the right to terminate the agreement at its option for any of the five reasons therein specified. Such paragraph also provided for the automatic termination of the agreement upon the occurrence of certain stated events.

38. On or after November 18, 1960, Chrysler and Chrysler Motors in violation of the agreement notified plaintiffs and all

De Soto dealers that they would discontinue the manufacture and sale of all De Soto make automobiles. Such right was not reserved in paragraph 21 or elsewhere in plaintiffs' agreements.

39. As a result of the discontinuance of production of all De Soto cars and the failure to supply plaintiffs with such cars, defendants thereby breached their agreement, for which plaintiffs claim general damages for loss of profits and special damages as hereinafter set forth.

40. Defendants further breached other duties, obligations and responsibilities contained in the INTRODUCTION and in paragraph 10 of the agreement with respect, among others, to the following: express responsibilities and obligations providing for "mutuality of interests," "cooperation by both parties," and "the mutual goal of this relationship"; and the express duty to "use its best efforts to fill" plaintiffs' orders, all as more particularly described in paragraphs 41, 42, 43, 44 and 45 herein.

41. Defendants further breached the provisions of the agreement in that:

(a) The decision to discontinue the manufacture and sale of all De Soto cars was based upon anticipated distribution savings to defendants, without regard to defendants' contractual commitments to plaintiffs and other De Soto dealers and without regard to the consequent irreparable losses to the De Soto dealers' aggregate investments which approximated that of defendants.

(b) Defendants knew that the manufacture and sale of all automobiles are subject to cyclical variation in volume and profitability. Defendants seized upon a temporary decline in all cars sales to first limit production of the styles of De Sotos produced and then to discontinue all production of the De Soto, while simultaneously planning to manufacture and sell a number of new

and additional styles of automobiles of a size, horsepower and price similar or comparable to the De Soto. Such additional styles were manufactured and added to the Chrysler and Dodge makes of cars marketed by defendants through their Chrysler and Dodge dealer organizations. In discontinuing the De Soto, defendants recklessly destroyed the De Soto dealers and unfairly aided the Chrysler and Dodge dealers. Following the discontinuance of the De Soto, the sales of Chrysler and Dodge cars in the period 1961 to the present time increased sharply in volume and profitability.

42. Defendants further breached the provisions of the agreement in that:

(a) Defendants formed a plan and scheme to injure and destroy the business of plaintiffs and other Plymouth dealers who were also De Soto dealers by eliminating almost all of them in New York City and elsewhere in the United States. The discontinuance of the De Soto was the means adopted by defendants to carry out the aforesaid plan and scheme. In pursuance thereof, the number of Plymouth dealers in the City of New York and elsewhere was reduced by approximately two-thirds in the period 1956 to 1964, and plaintiffs were eliminated as Plymouth dealers.

(b) In carrying out the aforesaid plan and scheme to injure and destroy plaintiffs' business, defendants knew that plaintiffs as dealers having large facilities with substantial overhead in the City of New York would be unable to continue as Plymouth dealers. Plaintiffs were thereby compelled by economic necessities and operating losses, foreseeable and foreseen by defendants, to completely cease all business activities and give up their Plymouth franchises; and, as a proximate result thereof, plaintiff lost further profits and goodwill and sustained further injuries, all of which are claimed as special damages.

43. Defendants further breached the provisions of the agreement in that defendants shortly thereafter wrote letters to and otherwise communicated with plaintiffs' and other dealers' De Soto customers, telling such customers not to deal with plaintiffs but to take their De Soto cars to Dodge dealers for service, repairs, maintenance and parts. Defendants thereby improperly induced plaintiffs' customers to discontinue their business relation with plaintiffs, diverted service, labor and parts sales to plaintiffs' competitors, and unjustifiably and unreasonably interfered with plaintiffs' business and reasonable business expectancies, all wantonly and maliciously aggravating plaintiffs' injuries. Such injuries are claimed as an item of special damages.

44. Damages resulting from defendants' breach of contract were aggravated by false and fraudulent representations and oral and written commitments by defendants' representatives that plaintiffs would be given Chrysler dealer agreements for the sale of the Chrysler make of cars; but defendants failed to do so. This increased the period of time during which plaintiffs conducted their businesses at a loss, aggravating the damages sustained in the liquidation of their businesses. Such damages are claimed as special damages.

45. Defendants further breached the provisions of the agreement by refusing to grant plaintiffs the benefits upon termination provided for in paragraph 21 of the agreement, relating to the return of parts and accessories, and paragraph 23, relating to assistance with respect to dealers' premises.

46. The aforesaid breaches of the agreement were willful, wanton and malicious.

47. Special damages are claimed for losses and injuries sustained in the winding up and liquidation of the combined De Soto

and Plymouth operations, including losses and injuries sustained to cars, parts, accessories, supplies, furniture, fixtures, tools, equipment, leasehold improvements, leases, facilities accrued but unpaid salaries, operating losses and other losses.

48. Defendants granted and accorded certain favored dealers, directly or indirectly, unlawful discriminatory prices, bonuses, rebates, allowances, payments, services and facilities in violation of Section 2 (a), (d) and (e) of the Clayton Act, as amended, all as more particularly set forth in paragraphs 11 through 21 of this complaint. Such favored dealers competed with plaintiffs and acted as stimulator dealers by lowering the prices at which defendants' various products could be sold by plaintiffs. Defendants' unlawful acts of discrimination increased plaintiffs' losses and lowered their profits, thereby affecting the computation of damages herein claimed.

49. Plaintiff Long Island suffered damages to its business and property as a direct and proximate result of defendants' breach of the agreement and claims damages as follows:

(a) general damages of \$400,000 for loss of profits resulting from defendants' breach of Long Island's De Soto agreement;

(b) special damages of \$800,000 for the items of special damages set forth in paragraphs 42, 43, 44, 45 and 47; and

(c) exemplary damages of \$100,000 as a result of the willful, wanton and malicious breach of contract.

AS AND FOR A SECOND CAUSE OF ACTION FOR WATERS

50. Plaintiff Waters repeats and realleges all of the allegations set forth in paragraphs 2, 4 through 7, 11 through 21, 25, 26, and 38 through 48 of this complaint. All uses of the term "plaintiffs" in paragraphs 11, 16 through 21, and 38 through 48 shall be deemed to refer specifically to plaintiff Waters for the purposes of this cause of action.

51. Plaintiff Waters and Chrysler Motors, for good and valuable consideration, entered into a form "De Soto Direct Dealer Agreement," dated June 17, 1958. This agreement incorporated as part thereof the form "De Soto Direct Dealer Agreement Terms and Provisions," marked "Form 57-DS." Chrysler Motors agreed to sell and Waters agreed to purchase De Soto cars, parts and accessories at regular dealer prices. Waters and Chrysler Motors also entered into two other agreements, covering the Plymouth make of cars and the Valiant make of cars.

52. Waters complied with the terms and provisions of the De Soto agreement and duly performed its duties and obligations.

53. Waters' De Soto agreement was a perpetual agreement. In paragraph 21 Chrysler reserved the right to terminate the agreement for any of the five reasons therein specified. Such paragraph also provided for the automatic termination of the agreement upon the occurrence of certain specified events.

54. Plaintiff Waters suffered damages to its business and property as a direct and proximate result of defendants' breach of the agreement and claims damages as follows:

- (a) general damages of \$350,000 for loss of profits resulting from the breach of the agreement;
- (b) special damages of \$700,000 for the items of special damages set forth in paragraphs 42, 43, 44, 45 and 47; and
- (c) exemplary damages of \$100,000 as a result of the deliberate, wanton and malicious breach of contract.

AS AND FOR A SECOND CAUSE OF ACTION FOR ASHDOWN

55. Plaintiff Ashdown repeats and realleges all of the allegations set forth in paragraphs 3 through 7, 11 through 21, 30, 31, and 38 through 48 of this complaint. All uses of the term "plaintiffs" in paragraphs 11, 16 through 21, and 38 through 48 shall be deemed to refer specifically to plaintiff Ashdown for the purposes of this cause of action.

56. Ashdown and Chrysler Motors, for good and valuable considerations, entered into a "De Soto-Plymouth Direct Dealer Agreement," dated May 27, 1957. This agreement incorporated as part thereof the form "De Soto-Plymouth Direct Dealer Agreement Terms and Provisions." Chrysler Motors agreed to sell and Ashdown agreed to purchase De Soto and Plymouth cars, parts and accessories at regular dealer prices. Ashdown thereafter entered into a separate agreement covering the Valiant make of cars.

57. Ashdown complied with the terms and provisions of the De Soto-Plymouth agreement and duly performed its duties and obligations.

58. Ashdown's aforesaid agreement was a perpetual agreement. In paragraph 21 Chrysler reserved the right to terminate the agreement for any of the five reasons therein specified. Such paragraph also provided for the termination of the agreement upon the occurrence of certain specified events.

59. Plaintiff Ashdown suffered damages to its business and property as a direct and proximate result of defendants' breach of the agreement and claims damages as follows:

- (a) general damages of \$350,000 for loss of profits resulting from the breach of the agreement;
- (b) special damages of \$700,000 for the items of special damages set forth in paragraphs 42, 43, 44, 45 and 47; and
- (c) exemplary damages of \$100,000 as a result of the deliberate, wanton and malicious breach of contract.

DEMAND FOR DAMAGES

WHEREFORE, plaintiffs demand judgment against the defendants as follows:

A. For plaintiff Long Island (i) in the amount of \$1,050,000 on its first cause of action, being in accordance with applicable law three times the amount of damages sustained by Long Island, and (ii) in the amount of \$1,300,000 for general, special and exemplary damages on its second cause of action;

B. For plaintiff Waters (i) in the amount of \$750,000 on its first cause of action, being in accordance with applicable law three times the amount of damages sustained by Waters, and (ii) in the amount of \$1,150,000 for general, special and exemplary damages on its second cause of action;

C. For the plaintiff Ashdown (i) in the amount of \$1,050,000 on its first cause of action, being in accordance with applicable law three times the amount of damages sustained by Ashdown, and (ii) in the amount of \$1,150,000 for general, special and exemplary damages on its second cause of action;

D. That this Court allow and the defendants be required to pay the full costs of this suit, including as a part thereof a reasonable fee for the services of plaintiffs' attorney with respect to plaintiffs' first causes of action; and

E. That the plaintiffs have such other and further relief as may be just and proper.

ALEXANDER HAMMOND

Alexander Hammond

Attorney for Plaintiffs
Office and P.O. Address
54 Riverside Drive
New York, New York 10024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X	
CHRYSLER MOTORS CORPORATION,	:
Plaintiff,	:
-----against-----	:
ESTREE COMPANY, a Partnership,	:
and SOUNDVIEW CHEVROLET COMPANY	:
INC.,	:
Defendants.	:
-----X	

Index No.

COMPLAINT

Plaintiff, Chrysler Motors Corporation, as and for its complaint herein, by its attorneys, Kelley Drye Newhall Maginnes & Warren, alleges as follows:

1. At all times hereinafter mentioned plaintiff was and still is a foreign corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York.

2. Upon information and belief, at all times hereinafter mentioned defendant Estree Company was and still is a partnership formed under the laws of the State of New York, and maintains an office at 200 Main Street, New Rochelle, County of Westchester, State of New York.

3. Upon information and belief, at all times hereinafter mentioned defendant Soundview Chevrolet Company, Inc., was and still is a corporation organized and existing under the laws of the State of New York, having its principal place of business at 188 Main Street, New Rochelle, County of Westchester, State of New York.

4. Upon information and belief, at all times hereinafter mentioned, defendant Estree Company was and still is the owner of certain real property hereinafter referred to as the "demised premises" located in the City of New Rochelle, County of Westchester, State of New York, known as Nos. 168, 188, and 200 Main Street and described as follows:

The Automobile dealership facilities presently occupied by Crabtree Motor Sales, Inc. consisting of two Automobile showrooms, service shop, body shop, new car service shop (in basement of building occupied by Sound View Chevrolet Co.) Used car reconditioning shop in building at 200 Main Street and a Used car lot.

And also the complete dealership facility presently occupied by Sound View Chevrolet Co.

And more particularly described in Exhibit 1 attached hereto and made a part hereof.

5. On or about the 17th day of July, 1964, an agreement and Option to Lease was entered into between plaintiff and Irene H. Crabtree, as General Partner of defendant Estree Company, which among other things gave to plaintiff upon exercise, the exclusive right (hereinafter referred to as the "exclusive option") to lease on January 1, 1968, for a term of ten years the demised premises. A copy of said Option to Lease is annexed hereto as Exhibit 2 and made a part of this complaint.

6. Pursuant to said Option to Lease and the agreement of the parties, plaintiff at various times before January 1, 1968, and before July 1, 1967, orally and in writing duly exercised its exclusive option.

7. Since on or about July 1, 1967 defendant Estree Company has failed and refused to accept and give due effect to said exercise, has failed and refused to

execute a written lease of the demised premises tendered to it by plaintiff, as required by said exclusive option and agreement, has failed and refused to honor and give effect to the exclusive option or the Lease Agreement, a copy of which is annexed to said Option to Lease, and has failed and refused to perform its obligation under said Option to Lease and agreement, although all of the foregoing has been duly demanded by plaintiff, but on the contrary has wrongfully asserted and continues to assert that plaintiff has not duly exercised the exclusive option and has threatened to permit others to occupy the demised premises and to refuse to deliver possession thereof to plaintiff although plaintiff will be entitled to occupy and to have possession of the demised premises on January 1, 1968 and thereafter for a term of ten years.

8. At all times herein mentioned plaintiff has been and is now ready, willing, and able to perform all conditions of the aforesaid Option to Lease and agreement, and the Lease Agreement annexed to said Option to Lease and has demanded performance on the part of defendant Estree Company of its obligations thereunder.

9. Plaintiff has no adequate remedy at law.

10. It is essential to determine whether plaintiff validly exercised the exclusive option and is entitled to occupy and have the possession of the demised premises on January 1, 1968, and thereafter for a term of ten years and to determine the respective rights of the parties in this controversy.

WHEREFORE, plaintiff prays that it may have,

1. A declaratory judgment herein, pursuant to Section 3001 of the Civil Practice Law and Rules, declaring the rights and other legal relations of the parties hereto in respect to the matters set forth in the complaint, and that said judgment declare that plaintiff duly exercised the exclusive option pursuant to the agreement of the parties, and that plaintiff has a right to occupy and is entitled to possession of the demised premises on January 1, 1968 and thereafter for a term of ten years pursuant to the provisions of the Lease Agreement attached to said Option to Lease.

2. An order and judgment directing specific performance of the Option to Lease and agreement, and said Lease Agreement.

3. Such other and further relief as to the Court may seem just and proper, together with its costs and disbursements.

Dated: New York, New York
December 29, 1967

Kelley Dye Newhall Maginnis & Warren
KELLEY DYE NEWHALL MAGINNIS &
WARREN
Attorneys for Plaintiff
350 Park Avenue
New York, New York 10022
Telephone No. PL 2-5800

275 a

EXHIBIT I

EXHIBIT A

ALL that lot or parcel of land, with the buildings and improvements thereon, situate, lying and being in the City of New Rochelle, County of Westchester, and State of New York, bounded and described, as follows:-

BEGINNING at a point on the southeasterly side of Main Street formed by its intersection with the dividing line between Lots 3 and 4 on a map entitled, "Map of Property belonging to the Guion Realty Company", New Rochelle, N. Y., surveyed August 1906 by W. L. Hayes, Engineer and Surveyor and filed in the Register's office of Westchester County (now County Clerk's Office, Division of Land Records) April 9, 1907 in Volume 25 of Maps at page 19; running thence along the southeasterly side of Main Street as shown on said map, the following courses and distances: North $54^{\circ} 21' 10''$ East 39 feet; North $53^{\circ} 35' 00''$ East 50.00 feet, to the division line between lots 5 and 6 as shown on said map; thence along the southerly side of Main Street, as now laid out, widened and improved, 410.84 feet to the intersection of the southeasterly side of Main Street and the westerly side of Le Fevres Lane; thence South $28^{\circ} 12' 17''$ East 184.83 feet to a stake; thence South $37^{\circ} 03' 50''$ West 189.81 feet to the southeasterly corner of a grant of land under water made by the People of the State of New York dated October 8, 1958, recorded in the Office of the County Clerk on December 29, 1961 in Liber 6172, page 145; thence along the southerly line of said grant South $55^{\circ} 43' 10''$ West 296.01 feet more or less to a point near the prolongation of the division line between lots 3 and 4 as shown on said map; thence North $35^{\circ} 26' 07''$ West 31.54 feet to the prolongation of the division line between lots 3 and 4 as shown on said map; thence along said line as shown on said map North $35^{\circ} 24' 10''$ West 212.15 feet to the point or place of **BEGINNING**.

TOGETHER with the right in common with the other tenants of the building known as 200 Main Street to the use of the driveway right of way immediately to the East of the building known as 188 Main Street.

EXCLUDING however that portion of the basement of the building known as 200 Main Street shown on the annexed blueprint as "Crabtree" (now occupied by HIP-CO Manufacturing Inc.) and "Turner", and provided also that the area marked "Rear Yard" on said blueprint and the driveways from Main Street and Le Fevres Lane to the "Common Entrance" be sufficiently clear and open to permit the tenants of said basement space, ingress and egress to and from said space.

EXHIBIT A - CONTINUED

ALSO EXCLUDING that portion of the premises known as 162 Main Street, New Rochelle, New York, leased to New Rochelle Precision Grinding Corporation by lease dated April 1960, which lease covers the entire basement floor of said building, an entrance from Le Fevres Lane and the vacant land adjoining the southeasterly side of said building but provided that tenant has the right in common with the said NIP-CO Manufacturing Inc., "Turner", and New Rochelle Precision Grinding Corporation to ingress and egress over a driveway crossing in a westerly direction said vacant land.

SUBJECT TO any encroachments by the structures on the premises hereby demised on any adjoining parcels.

TOGETHER with all of the right, title and interest, if any, of the Landlord in and to any streets and roads abutting the above-described premises to the center lines thereof.

TOGETHER with all of the right, title and interest of the Landlord in and to any and all strips and gores of land adjacent to or abutting the above-described property.

278 a

EXHIBIT 2

OPTION TO LEASE

279 a

1. The undersigned, in consideration of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, hereby gives to
Chrysler Motors Corporation

hereinafter referred to as Tenant, the exclusive right to lease, on
embargo Jan. 1, 19 63, the property known as 163 Main St.
~~described below~~ and 188 Main St. and 200 Main St., New Rochelle, N.Y.
and described as follows:

The Automobile dealership facilities presently occupied by
Crabtree Motor Sales, Inc. consisting of two Automobile
showrooms, service shop, body shop, new car service shop
(in basement of building occupied by Sound View Chevrolet Co.)
Used car reconditioning shop in building at 200 Main St. and
a Used car lot.

And also the complete dealership facility presently occupied
by Sound View Chevrolet Co.

These premises are more particularly described in Exhibit A
attached hereto and made a part thereof.

upon the terms, provisions and conditions set forth in the form of lease
annexed hereto, marked Exhibit "A", and hereby made a part hereof, and
initialled for identification by the undersigned.

2. The aforesaid option may only be exercised by the Tenant giving the
undersigned written notice of its intent to exercise said option by reg-
istered or certified mail posted in the U. S. mail at any time on or
prior to the day named in the preceding paragraph hereof, and addressed
to the undersigned at 200 Main Street
(Address)

New Rochelle New York
(City) (State)
Failure by Tenant to exercise this option shall not create any obligation
or liability to the undersigned whatsoever.

3. If the said option shall be exercised by the Tenant, as above
specified, then, and in such event, the undersigned and Tenant shall
notify the undersigned not later than July 1, 1967 of its intentions to
within ~~reasonable period~~ contemplated not to exceed 30 days 2-42
after the exercise of the said option, make, sign, acknowledge and
deliver an indenture of lease, in respect of the aforesaid premises, in
the form of lease annexed hereto; marked "Exhibit A".



280 a

Signed, sealed and delivered this 17th day of July, 1964.

IN PRESENCE OF:

LANDLORD

John Pannon

James D. Coitt
General Partner

ACKNOWLEDGMENT - LANDLORD BEING A CORPORATION

STATE OF _____

SS:

COUNTY OF _____

BE IT REMEMBERED that on this _____ day of _____, 19____, before me, a Notary Public _____ personally came _____ as _____ of _____, Landlord herein, and acknowledged as such officer that he did sign the company's name to the foregoing instrument and that the signing of the same is the duly authorized and voluntary act and deed of said Company for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Notary Public

My Commission expires: _____

ACKNOWLEDGMENT - LANDLORD BEING AN INDIVIDUAL

STATE OF New York

SS:

COUNTY OF Westchester

BE IT REMEMBERED that on this 17th day of July, 1964, before me, a Notary Public _____ personally came _____, Landlord herein, and acknowledged that he/they did sign the foregoing instrument as his/their voluntary act and deed for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

S. Griffin McClellan
Notary Public

My Commission expires

S. GRIFFIN MCCLELLAN, JR.
Notary Public, State of New York
Qualified in Westchester County
Term expires March 26, 1965

Lease Agreement

281 a

PARTIES

THIS AGREEMENT OF LEASE, made this _____ day of _____, 19____,
between Estree Co. A Partnership,
having an office at 200 Main Street, New Rochelle, N.Y.,
as Landlord, and Chrysler Motors Corporation,
a Delaware corporation, having an office at 7000 E.
Eleven Mile Road, Detroit 31, Michigan, as Tenant.

WITNESSETH:

1. Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed by Tenant, hereby lets and Tenant hereby hires premises with appurtenances thereunto belonging located at 168 Main St.
188 Main St. and 200 Main St. New Rochelle, N.Y. described as follows:

DESCRIPTION

The Automobile dealership facilities presently occupied by Crabtree Motor Sales, Inc. consisting of two Automobile showrooms, service shop, body shop, new car service shop (in basement of building occupied by Sound View Chevrolet Co.), Used car reconditioning shop in building at 200 Main St. and a Used car lot.

And also the complete dealership facility presently occupied by Sound View Chevrolet Co.

These premises are more particularly described in Exhibit A attached hereto and made a part thereof.

AUTHORIZED USE

to be used for an automobile sales and service establishment, including, but not limited to, the sales and service of all types of motor vehicles, and the sale of such merchandise as is ordinarily sold by a dealer, and other purposes incidental to an automobile sales and service establishment, or for any other lawful purposes not injurious to the reversion, for a term of 120 months, beginning on the 1st day of January, 1968, and ending on the 31st day of December, 1977, at a total rental of Five Hundred and Eighty Thousand Dollars (\$580,000.00) payable in equal monthly installments of \$4,833.33 per month in advance on the first business day of each month during the term.

TERM

RENT

b/c

7. Tenant reserves the right to make major structural changes in the leased premises without written consent of the Landlord, provided, however, that said changes would not violate the landlord's obligation to its other tenants; and provided any such improvements shall become the property of the landlord at the termination of the lease, and any renewal or extension thereof:

LANDLORD'S
REPRESENTATION OF
LAWFUL USE

8. Landlord represents that the leased premises may be lawfully used for an automobile sales and service establishment, including sales and service of any motor vehicles, and incidental purposes. If any law, ordinance, ruling, order or regulation now exists or is hereafter enacted prohibiting the use of said premises for any one or more of the foregoing purposes, then Tenant may, at its option, terminate this lease and all of its liability hereunder shall cease from and after the date when such law, ordinance, ruling or regulation, or prohibition becomes effective, and any advance rental shall be apportioned and refunded to Tenant.

FIRE AND
OTHER
CASUALTY

9. If the premises shall be so damaged by fire, casualty, or other cause or happening, or if any lawful authority shall order demolition or removal of any structure covered by this lease, so as to render the premises unfit for Tenant's proposed use, then this lease shall terminate at the option of the Tenant and Tenant's obligation to pay rent shall cease, and any unearned rent paid in advance shall be refunded to Tenant.

If the demised premises shall be partially destroyed by fire, casualty, or other cause or happening, or be declared unsafe by any lawful authority, then the demised premises shall be promptly restored or made safe by Landlord and a just proportion of the rent specified shall abate until the leased premises shall have been restored or made safe within ninety (90) days after partial destruction or declaration of unsafe condition; provided, however, that should said premises not be restored to their former condition and/or made safe within ninety (90) days from the date of said partial destruction or declaration of unsafe condition thereof, then, the Tenant, at its option may cancel and terminate this lease in its entirety, and if Tenant exercises the option to cancel, then any unearned rent paid in advance shall be refunded to it.

CONDEMNATION

10. If all or any portion of the demised premises shall be condemned or taken by lawful authority, Tenant, at its option, may cancel or terminate this lease at any time after final order of condemnation or taking, and any

unearned rent paid by Tenant in advance shall be apportioned and refunded to it upon such termination.

RIGHT OF
ENTRY BY
LANDLORD

"FOR SALE"
AND "TO
LET" SIGNS

11. Landlord may, during the term of this lease, at reasonable times and during usual business hours, enter the premises to view them, and, except in case of renewal or extension, may, at any time within two (2) months next preceding the expiration of the specified term, show the premises to others for the purpose of rental or sale, and may affix to any suitable parts of the premises a notice for lease or sale thereof.

ALTERATIONS
OR IMPROVE-
MENTS BY
TENANT,
TRADE FIX-
TURES, ETC.

12. If any alterations or improvements, except painting or wall papering *M.C.* ~~is made at Tenant's expense~~ or if Tenant shall install or acquire ownership of previously installed shelving, lighting fixtures, removable partitions, trade fixtures, machinery and equipment, or advertising signs, they shall remain Tenant's property and may be removed prior to termination of Tenant's occupancy, provided, however, that Tenant shall repair any damage occasioned by removal thereof and shall at Landlord's option restore or replace any structural parts or improvements which may previously have been removed by Tenant.

LANDLORD'S
REMEDIES IN
EVENT OF
DEFAULT,
BANKRUPTCY
OR INSOL-
VENCY OF
TENANT

13. If Tenant shall fail to observe or perform any of its obligations under this lease and shall fail to cure its default within thirty (30) days after notice from Landlord to do so, or if Tenant shall be adjudicated bankrupt or become insolvent or shall make an assignment for the benefit of creditors, then in any of said cases, Landlord may lawfully enter into and upon the leased premises or any part thereof and repossess the same and expel the Tenant and persons claiming under and through it, and remove any effects, forcibly if necessary, without being guilty of trespass and without prejudice to any remedies which may be available for arrears of rent or for Tenant's breach of covenant, and upon entry as aforesaid, this lease shall terminate and wholly expire, and Tenant covenants that in case of such termination it will indemnify Landlord against all loss of rent which Landlord may incur by reason of such termination during the residue of the specified term.

2042

14. Tenant agrees to indemnify Landlord against any actions or claims which may be asserted or brought by third parties against Landlord and which are based upon Tenant's negligent acts or omissions in connection with its use and occupancy of the leased premises.

15. Landlord hereby waives all claims against Tenant, its subtenants or assignees, for loss or damage caused by fire, explosion, or perils normally insured against by standard fire and extended coverage insurance policies, regardless of the cause of such damage, including damage resulting from the negligence of Tenant, subtenants or assignees, their agents, servants or employees.

16. Any holding over by Tenant or any assignee or subtenant beyond the expiration of the specified term shall give rise to a tenancy from month to month.

~~17. Tenant may, at its option, obtain a renewal of this lease for a further term of equal duration and upon the terms and conditions herein stated by giving to the Landlord notice of its intention to renew not less than sixty (60) days prior to the expiration of the specified term.~~

17.2f. All notices to be given hereunder by either party shall be in writing and given by personal delivery or registered mail to Landlord at the following address: 200 Main St. New Rochelle, N.Y.
 or to an officer of the Tenant, and the date of any notice by registered mail shall be deemed to be the date of registration thereof.

~~19. If due to war conditions or an order of an authorized government agency, Chrysler Corporation ceases production of automobiles and trucks for civilian use, then this lease, at the option of the Tenant, shall terminate and any advance rental shall be apportioned and refunded to Tenant.~~

18. 20. The terms and conditions of this agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors or assigns.

19. Tenant may, at its option, obtain a renewal of this lease for a further term of equal duration and upon the terms and conditions herein stated by giving to the Landlord notice of its intention to renew not less than sixty (60) days prior to the expiration of the specified term. All the terms and conditions of the renewal lease shall be the same as those herein contained except for the term which shall expire ten (10) years after the date of expiration of this lease and the rent which shall be ^{the} appraised rental value of the demised premises at the date of the Tenant's exercise of the option to renew, or the rent of Fifty, - eight thousand dollars (\$58,000) per annum hereinabove reserved, whichever shall be higher. In the event that the Landlord and the Tenant are unable to agree as to the appraised rental value of the demised premises the same shall be determined by arbitration according to the rules of the American Arbitration Association. J.H.C. ✓

20. This lease and any renewal hereof shall be at all times subject and subordinate to the lien of any mortgage now or hereafter placed upon the demised premises or upon the premises of which the demised premises are a part provided, however, that in no event shall such mortgage exceed in amount sixty percent (60%) of the then market value of the premises covered thereby and shall be originally held by a bank, trust company or insurance company authorized to do business in the State of New York. J.H.C. ✓

21. In the event that the taxes assessed against the premises owned by the Landlord, of which the demised premises are a part, shall in any year during the demised term or any renewal term exceed in amount the taxes levied and assessed against said premises by the City of New Rochelle for the calendar year 1962, then the amount of such increase shall be apportioned pro rata over all of the premises owned by the Landlord of which the demised premises are a part and the amount of such increase ratably apportioned to the demised premises during any such calendar year shall be paid by the Tenant as additional rent in J.H.C. ✓

7
287.a

addition to the rent hereinabove reserved.

IN WITNESS WHEREOF, the parties hereto have executed this agreement
in person or by a duly authorized officer on the day and year stated
in the commencement.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

John F. Hannon

J

LANDLORD: Rehab Company

BY John F. Hannon

ITS General Partner

AND _____

ITS _____

TENANT: _____

BY _____

ITS _____

AND _____

ITS _____

EXHIBIT A

ALL that lot or parcel of land, with the buildings and improvements thereon, situate, lying and being in the City of New Rochelle, County of Westchester, and State of New York, bounded and described, as follows:-

BEGINNING at a point on the southeasterly side of Main Street formed by its intersection with the dividing line between Lots 3 and 4 on a map entitled, "Map of Property belonging to the Guion Realty Company", New Rochelle, N. Y., surveyed August 1906 by W. L. Hayes, Engineer and Surveyor and filed in the Register's office of Westchester County (now County Clerk's Office, Division of Land Records) April 9, 1907 in Volume 25 of Maps at page 19; running thence along the southeasterly side of Main Street as shown on said map, the following courses and distances: North $54^{\circ} 21' 10''$ East 39 feet; North $53^{\circ} 35' 00''$ East 50.00 feet, to the division line between lots 5 and 6 as shown on said map; thence along the southerly side of Main Street, as now laid out, widened and improved, 410.84 feet to the intersection of the southeasterly side of Main Street and the westerly side of Le Fevres Lane; thence South $28^{\circ} 12' 17''$ East 184.83 feet to a stake; thence South $37^{\circ} 03' 50''$ West 189.81 feet to the southeasterly corner of a grant of land under water made by the People of the State of New York dated October 8, 1958, recorded in the Office of the County Clerk on December 29, 1961 in Liber 6172, page 145; thence along the southerly line of said grant South $55^{\circ} 43' 10''$ West 296.01 feet more or less to a point near the prolongation of the division line between lots 3 and 4 as shown on said map; thence North $35^{\circ} 26' 07''$ West 31.54 feet to the prolongation of the division line between lots 3 and 4 as shown on said map; thence along said line as shown on said map North $35^{\circ} 24' 10''$ West 212.15 feet to the point or place of BEGINNING.

TOGETHER with the right in common with the other tenants of the building known as 200 Main Street to the use of the driveway right of way immediately to the East of the building known as 188 Main Street.

EXCLUDING however that portion of the basement of the building known as 200 Main Street shown on the annexed blueprint as "Crabtree" (now occupied by NIP-CC Manufacturing Inc.) and "Turner", and provided also that the area marked "Rear Yard" on said blueprint and the driveways from Main Street and Le Fevres Lane to the "Common Entrance" be sufficiently clear and open to permit the tenants of said basement space, ingress and egress to and from said space.

EXHIBIT A - CONTINUED

ALSO EXCLUDING that portion of the premises known as 162 Main Street, New Rochelle, New York, leased to New Rochelle Precision Grinding Corporation by lease dated April 1960, which lease covers the entire basement floor of said building, an entrance from Le Fevres Lane and the vacant land adjoining the southeasterly side of said building but provided that tenant has the right in common with the said NIP-CO Manufacturing Inc., "Turner", and New Rochelle Precision Grinding Corporation to ingress and egress over a driveway crossing in a westerly direction said vacant land.

SUBJECT TO any encroachments by the structures on the premises hereby demised on any adjoining parcels.

TOGETHER with all of the right, title and interest, if any, of the Landlord in and to any streets and roads abutting the above-described premises to the center lines thereof.

TOGETHER with all of the right, title and interest of the Landlord in and to any and all strips and gores of land adjacent to or abutting the above-described property.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

----- x
JAMES POLK, :
Petitioner, : Index No.
- against - :
CROSS & BROWN CO., : ANSWER
Defendant. :
----- x

Defendant Cross & Brown Co., appearing by its attorneys Kelley Drye Newhall Maginnes & Warren, alleges for an answer as follows:

1. Defendant denies all allegations contained in the First Cause of Action except that a demand was made and refused.

2. Defendant denies all allegations contained in the Second Cause of Action.

AFFIRMATIVE DEFENSES

3. The indorsed complaint fails to state a cause of action.

4. Plaintiff has released, and otherwise waived, all claims made against defendant in the indorsed complaint.

June 7, 1967

KELLEY DRYE NEWHALL MAGINNES & WARREN
Attorneys for Defendant
Cross & Brown Co.
350 Park Avenue
New York, N. Y. 10022

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK

JAMES POLK,

Petitioner,

- against -

CROSS & BROWN CO.,

Defendant.

AFFIDAVIT OF
SERVICE BY MAIL

Index No.

STATE OF NEW YORK)
COUNTY OF NEW YORK)

SS.:

THERESA R. ALLEN, being duly sworn,
deposes and says that she is over the age of eighteen years,
that she resides at 61-47 Eliot Avenue, Middle Village,
New York, and that she is not a party to the above
entitled action.

That on the 7th day of June, 1967, she
served the annexed Answer
on the attorney(s) hereinafter named by depositing (a)
true copy(ies) thereof contained in (a) securely sealed,
postpaid wrapper(s), properly addressed to the said
attorney(s) as follows:

Gerald Mann, Esq.
(Mark Fresco, Esq.,
of Counsel)
Legal Aid Society
249 Sullivan Street
New York, New York 10012

292 a

in the letter box regularly maintained and exclusively
controlled by the United States Government at No. 350 Park
Avenue, Borough of Manhattan, New York, New York 10022.

Shirley L. Allen

Sworn to before me this
7th day of June, 1967.

Joseph Warren

JOSEPH WARREN
Notary Public, State of New York
No. 03-9539130
Qualified in Bronx County
Cert. Filed in New York County
Commission Expires March 30, 1968

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY R. DI CARLO and DI CARLO
DODGE, INC.,

Plaintiffs,

-against-

CHRYSLER MOTORS CORPORATION,

Defendant.

X

:

:

:

:

:

X

COMPLAINT

Plaintiffs, for their complaint herein, allege:

1. Plaintiff, DiCarlo Dodge, Inc., is a duly qualified corporation organized and existing under the laws of the State of New York.

2. Plaintiff, Anthony R. DiCarlo, is a fifty-one percent stockholder of DiCarlo Dodge, Inc.

3. Upon information and belief, defendant Chrysler Motors Corporation is a corporation organized and existing under the laws of the State of Delaware, with offices at 1751 Broadway, New York City, New York.

4. Jurisdiction of this Court is founded on 15 U.S.C. §1222.

5. Defendant has failed and refused and neglected to act in good faith

(a) in performing and complying with the terms and provisions of the plaintiff's franchise agreement hereinafter described; and

(b) in not issuing a permanent franchise agreement, as hereinafter more fully set forth.

6. Defendant is engaged in the manufacture of Dodge passenger cars and trucks for sale under its mark and name throughout the United States.

7. Plaintiff, DiCarlo Dodge, Inc., is a distributor and retailer of Dodge cars and trucks, and plaintiff, Anthony R. DiCarlo, is a fifty-one percent stockholder of said corporation. The two plaintiffs shall hereinafter be referred to as "plaintiff-distributor."

8. Plaintiff-distributor started as a distributor and retailer of Dodge cars and trucks in 1955 in Walden, New York, under the name of DiCarlo Motors, Inc. The name of the corporation was changed in 1965 to the present name of DiCarlo Dodge, Inc.

9. Plaintiff-distributor maintained its business in a building and on land which was owned by it and members of plaintiff, Anthony R. DiCarlo's family. The building and land were worth approximately \$45,000 for its use as an automobile retail establishment.

10. Plaintiff-distributor operated from 1955 to October, 1965 in Walden on a profitable basis for both the defendant and itself.

11. Plaintiff-distributor maintained a better than average sales position during the entire period of 1955 to 1965.

12. Plaintiff-distributor during 1964, the last full year during which it operated at Walden, New York, sold in excess of the minimum sales responsibility attributed to it by defendant.

13. Upon information and belief, defendant for the two years immediately preceding the plaintiff-distributor being given its Newburg, New York distributorship, did not have a distributor in said locality.

14. In or about November, 1964, and early in 1965, plaintiff-distributor and defendant entered into negotiations to transfer plaintiff-distributor's business operation from Malden, New York, to Newburgh, New York.

15. In or about February, 1965, plaintiff-distributor agreed to open a Dodge distributorship in the Town of Newburgh and defendant agreed to transfer, grant and issue a permanent Dodge distributorship to the plaintiff-distributor for the area encompassed by the following towns: Newburgh, Rock Tavern, Roseton, Vails Gate and Plattekill.

16. In or about February, 1965, plaintiff-distributor and defendant entered into a letter agreement dated February 26, 1965, covering the plaintiff-distributor's new franchise area set forth in paragraph "15" hereof.

17. Plaintiff-distributor was advised that the letter agreement of February 26, 1965 was a temporary measure pending its construction and organization of the facilities in the Town of Newburgh and that in or about September, 1965, a permanent direct dealer agreement would be issued to it covering the sale of passenger cars and trucks.

18. Plaintiff-distributor simultaneously with the construction and organization of the facilities in the Town of Newburgh, disposed of its then existing premises in Malden, New

York, at a substantial loss.

19. Plaintiff-distributor obtained a substantial loan from the County National Bank, Newburgh, New York, to finance the construction and organization of said new distributorship.

20. Plaintiff-distributor reinvested the monies that it received from the proceeds of the sale of the property in Walden, New York, as well as other resources which constituted the bulk of Anthony R. DiCarlo's family's savings towards the establishment of the new distributorship in the Town of Newburgh, New York.

21. The letter agreement of February 26, 1965 provided in part as follows:

"(5) If this arrangement does not terminate sooner as provided in Paragraph (3), above, and thus continues in effect for the period set forth in said Paragraph (3), DODGE, at expiration of such period, will enter into a regular Dodge Direct Dealer Agreement with DEALER, provided that DEALER has fulfilled all of the following conditions which DEALER understands and agrees to be reasonable and necessary:

(A) Provided and maintained net working capital for use in the purchase, sale and service of Dodge passenger cars and trucks in the amount not less than \$50,000.

(B) Additional construction of new facilities for the sale and service of Dodge passenger cars and trucks located at Route 9 W, Newburgh, New York, in accordance with the architect's drawings submitted.

(C) Employed and maintained in DEALER'S employment three (3) new Dodge passenger car and truck salesmen.

(D) Provide DODGE regularly, on forms satisfactory to DODGE, with a monthly financial statement of DEALER'S Dodge passenger car and truck business by the tenth (10th) of the month following the month covered by each statement.

(L) During the period this arrangement has continued in effect, DEALER has sold at retail in the Sales Locality described in Paragraph (1), above, a sufficient number of new Dodge passenger cars and trucks to equal or exceed DEALER'S Dodge passenger car and truck Minimum Sales Responsibility(ies) as defined in Paragraph 7 of the Dodge Direct Dealer Agreement.

(F) DEALER is otherwise qualified for a regular Dodge Direct Dealer Agreement."

22. Plaintiff-distributor at all times during the term of the letter agreement of February 26, 1965 performed all the conditions on its part to be performed, and acted in good faith towards defendant in performing the terms of the franchise.

23. Upon information and belief, defendant in an over-all policy of eliminating small distributors and substituting its own direct distributorships under its "Dealers' Enterprises" Division, in or about October, 1965, failed to issue a permanent Dodge Direct Dealer Agreement to the plaintiff-distributor as provided for in said agreement, although duly demanded, upon the pretext that defendant was not issuing permanent direct dealer agreements. Several months later, defendant claimed that plaintiff-distributor had not met its minimum sales responsibilities.

24. Defendant in or about February, 1965, embarked upon a program to bring about the termination of plaintiff-distributor's franchise. Among the acts committed by the defendant in the course of said program are the following:

(a) Defendant caused the plaintiff-distributor who was not then represented by counsel to enter into a letter agreement dated February 26, 1965 upon the pretext that this would automatically become a permanent Direct Dealer Agreement similar to the one which it then held

for the Walden area in or about September, 1965, immediately prior to defendant's announcement of its 1966 models.

(b) Defendant caused the termination of the permanent Direct Dealer Agreement for the Walden distributorship as a condition to the issuance of the permanent Direct Dealer Agreement for the Newburgh distributorship, all of which resulted in a substantial monetary loss to the plaintiff-distributor.

(c) Defendant from 1965 to date has attributed to plaintiff-distributor an incorrect and unrealistic sales responsibility for the area encompassed by the Newburgh distributorship, all with a view toward enabling the defendant to fabricate a basis for terminating said Newburgh distributorship.

(d) Defendant knew or should have known that said minimum sales responsibility was incorrect and unrealistic as evidenced by their prior experience in the area.

(e) Defendant in or about October, 1965, intimidated and coerced plaintiff-distributor to acquiesce in the signing of a second letter agreement in lieu of the issuance of a permanent Direct Dealer Agreement by threatening to terminate the franchise entirely if plaintiff-distributor refused consent to such demand.

(f) On or about October 5, 1965, plaintiff-distributor capitulated to defendant's coercion and entered into a new letter agreement with the defendant for a period of two years.

(g) Defendant by the October 5, 1965 letter agreement increased the area to include the following towns: Baybrook, Montgomery, Pine Bush, Thompson Ridge, Walden and Wallkill, and required the plaintiff-distributor to increase his net working capital from \$50,000 to \$60,750.

(h) Defendant's ostensible dissatisfaction with plaintiff-distributor's sales given as a reason for failing to issue a permanent Direct Dealer Agreement was a subterfuge.

(i) In or about September, 1967, defendant once again refused to issue a permanent Direct Dealer Agreement to plaintiff-distributor.

(j) Defendant placed plaintiff-distributor's account on a C.O.D. basis effective October 5, 1967 in violation of the plaintiff-distributor's distributorship agreement and thereby further hampered plaintiff-distributor's efforts to operate its distributorship efficiently and profitably.

(k) Defendant in or about November, 1967, intimidated and coerced plaintiff-distributor to acquiesce to an extension of the then existing letter agreement in lieu of the issuance of a permanent Direct Dealer Agreement by threatening to terminate the franchise entirely and stop delivery of all Dodge cars and trucks if plaintiff-distributor refused to consent to such demand.

(l) Plaintiff-distributor capitulated to demand.

ant's coercion and agreed to an extension of the letter agreement for an additional period of one year.

(m) Defendant submitted for signature an agreement which purportedly was an extension of the then existing letter agreement, but which was, in fact, a new agreement embodying additional terms and conditions which defendant knew plaintiff-distributor could not accept.

(n) Defendant has threatened to terminate plaintiff-distributor's distributorship agreement and cut off its supply of Dodge cars and trucks.

25. Defendant as part of the intimidation and coercion of plaintiff-distributor has refused to discuss any of the aforesaid matters or changes in any of the provisions of the proposed extension agreement and offered said extension agreement solely on a "take it or leave it" basis.

26. Defendant has set a ten day deadline which will expire on or about January 12, 1968.

27. Plaintiff-distributor at all times during the terms of the Newburgh franchise has performed all conditions on its part to be performed, and acted in good faith toward the defendant in performing the terms and conditions of the franchise.

28. By reason of the matters hereinabove alleged, plaintiff-distributor has been damaged in an amount not less than \$45,000.

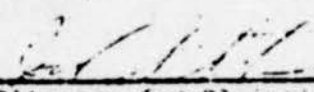
29. The damages set forth in paragraph "28" hereof will not adequately compensate plaintiff-distributor in the event of defendant's termination of plaintiff-distributor's

Newburgh franchise and it is essential that an injunction be issued preventing the wrongful termination of said franchise.

WHEREFORE, plaintiffs ask judgment against the defendant for relief in the sum of \$45,000.00, for injunctive redress relief, and permanently restraining defendant, its officers, agents, employees and attorneys, from terminating plaintiffs' franchise, and more particularly, that portion of the franchise which requires defendant to supply plaintiffs with Dodge passenger cars, trucks and parts and credit terms for the purchase of parts, and issuing a permanent (Direct Dealer Agreement) franchise agreement, together with the costs and disbursements of this action, including reasonable attorney's fees, and such other and different relief as the Court may deem just and proper.

Dated: New York, New York
January 11, 1963.

JOEL S. STERN


Attorney for Plaintiffs
120 East 56th Street
New York, N. Y. 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x
: ANTHONY R. DICARLO and DICARLO
DODGE, INC.,

Plaintiffs,

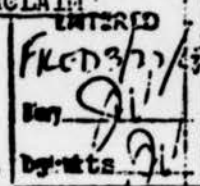
: Civil Action
File No.
: 68 Civ. 163

- against -

CHRYSLER MOTORS CORPORATION,

Defendant.

: AMENDED ANSWER
: and
: COUNTERCLAIM



----- x
Defendant, Chrysler Motors Corporation,
attorneys, Kelley Drye Newhall Maginnes & Warren, answers
the complaint herein as follows:

1. Denies having sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 7, 8, 9, 10, 11, 12, 18, 19, 20 and 29 of the complaint.

2. Denies the allegations contained in paragraphs 4, 5, 6, 13, 14, 15, 17, 23, 24, 25, 26, 27 and 28 of the complaint.

3. Denies the allegations contained in paragraph 16 of the complaint except admits that in or about February, 1965 a letter agreement dated February 26, 1965 was entered into by defendant, but begs leave to refer to the agreement itself for its terms, provisions and conditions.

4. Denies that plaintiffs performed all the conditions on their part to be performed or acted in good faith towards defendant in performing and carrying out

their obligations under the letter agreement dated February 26, 1965 as alleged in paragraph 22 of the complaint and alleges as a separate defense to the action that plaintiffs failed and refused to perform and breached, among others, paragraph 5(A), (B), (C), (D) and (E) of the alleged agreement and failed to act in good faith within the meaning of Section 1(e) of the Automobile Dealer Franchise Act, (15 U.S.C. §1221(e)), in, among other things, failing to provide and maintain the agreed to amount of working capital, failing to construct and complete new facilities for the sale and service of defendant's products as required, failing to employ and maintain three new Dodge car and truck salesmen, failing to provide defendant with the agreed to monthly financial statements, and in failing to meet the agreed to minimum sales responsibility.

FOR A FIRST DEFENSE

5. The complaint fails to state a claim upon which relief may be granted.

FOR A SECOND DEFENSE

6. The Automobile Dealer Franchise Act under which this action is purportedly brought does not provide for or allow the granting of equitable or injunctive relief.

FOR A THIRD DEFENSE

7. Assuming the making or promise of the permanent agreement alleged in the complaint, the Automobile

Dealer Franchise Act does not permit the maintenance of an action based on an oral agreement, understanding or promise.

FOR A FOURTH DEFENSE

8. Assuming the making of the permanent agreement alleged in the complaint, said alleged agreement was not to be performed within one year from the making thereof and neither said agreement nor any note or memorandum thereof was ever made in writing and subscribed by the party to be charged therewith or its lawful agent as required by Section 5-701(1) of the General Obligations Law of the State of New York and is further void under the Uniform Commercial Code.

FOR A FIFTH DEFENSE

9. That in or about August or September, 1965, plaintiffs and defendant for a valuable consideration duly executed a writing wherein and whereby defendant was fully and forever discharged and released from the alleged claim or claims set forth in the complaint.

FOR A SIXTH DEFENSE

10. That in or about August, 1965, and in or about October, 1965 plaintiffs rescinded, cancelled and terminated the alleged agreement of February 26, 1965 and the alleged permanent agreement without reserving the rights alleged in the complaint and rescinded, cancelled and terminated any such rights that may have existed prior or accrued subsequent thereto.

FOR A SEVENTH DEFENSE

11. That in or about October, 1965, plaintiffs and defendant for a valuable consideration duly executed a writing wherein and whereby defendant was fully and forever discharged and released from any claims or rights arising out of the agreement dated February 26, 1965 or any other agreement made prior to October 5, 1965.

FOR AN EIGHTH DEFENSE

12. That after the alleged breach of contract and failure to issue the permanent agreement alleged in paragraphs 15, 23, 24 of the complaint, plaintiffs accepted the agreement dated October 5, 1965, the performance thereof was undertaken and the benefits thereof received.

13. By reason of the foregoing, plaintiffs have waived and are estopped to assert the alleged breach of contract or failure to issue the alleged permanent agreement.

FOR A NINTH DEFENSE

14. That after the alleged breach of contract and failure to issue the permanent agreement alleged in paragraphs 15, 23, 24 of the complaint, plaintiffs accepted the agreement dated October 5, 1965, the performance thereof was undertaken and the benefits thereof received.

15. By reason of the foregoing, even assuming that plaintiffs were coerced and forced into entering the agreement dated October 5, 1965, as alleged in the complaint, plaintiffs have acquiesced in and ratified said

agreement by undertaking and purporting to perform and act thereunder and receiving and accepting benefits pursuant thereto.

FOR A TENTH DEFENSE

16. That after the alleged breach of the February 26, 1965 agreement and alleged failure to issue the permanent agreement, defendant, without any legal or other obligation, offered to plaintiffs and plaintiffs agreed to accept and accepted the agreement dated October 5, 1965 in full satisfaction and discharge of any and all rights and claims arising out of defendant's alleged failure to issue the claimed permanent agreement and alleged breach of the February 26, 1965 agreement.

FOR AN ELEVENTH DEFENSE

17. Assuming the making of the permanent agreement averred in the complaint, said agreement was not made by an agent, employee, servant or other person who had capacity or legal authority, actual or apparent, to bind defendant to such an agreement.

FOR A TWELFTH DEFENSE

18. Plaintiffs are guilty of gross laches in delaying with full notice of their claims over two years in bringing this action as to the matters alleged in the complaint, which delay and laches bars the maintenance of this action and the granting of the relief sought.

FOR A THIRTEENTH DEFENSE

19. As more fully set forth in paragraph 4 of this answer, plaintiffs breached, failed to perform their obligations, and failed to comply with the conditions and terms of the agreements dated February 26, 1965 and October 5, 1965.

FOR A FOURTEENTH DEFENSE

20. Plaintiffs failed to act in good faith within the meaning of Section 1(e) of the Automobile Dealer Franchise Act, 15 U.S.C. §1221(e), in among other ways, those set forth in paragraphs 4, 19 and 24 through 36 of this amended answer and counterclaim.

FOR A FIFTEENTH DEFENSE

21. As more fully set forth in paragraph 4 of this answer, plaintiffs failed to give the consideration which they agreed to give defendant under the agreements dated February 26, 1965 and October 5, 1965.

FOR A SIXTEENTH DEFENSE

22. The Automobile Dealer Franchise Act, 15 U.S.C. §1221, et seq., deprives defendant of due process and equal protection of the laws guaranteed by the United States Constitution in that it among other things (A) purports to interfere with and restrict the freedom of contract and to confer a right to damages against a manufacturer by the exercise of its contractual rights; (B) is vague and indefinite, lacking proper standards to

apprise defendant of what acts or courses of conduct are permissible or impermissible; (C) may be construed and applied so as to deprive defendant of its rights and defenses as established theretofore and enforced under the applicable law; (D) arbitrarily legislates against a class of persons, i.e. automobile manufacturers, and in favor of a class of persons, i.e. automobile dealers, without legislating against other types of manufacturers and in favor of other types of dealers whose relationship and dealings meet the purported purpose of and purported evil to be eliminated by this act; (E) arbitrarily provides a cause of action in favor of a class of persons, i.e. automobile dealers, for certain acts or conduct without providing a corresponding cause of action for a class of persons, i.e. automobile manufacturers for the same or similar acts or conduct; (F) impairs the manufacturers' free choice of dealers and interferes with the conduct of their business and the use of their property; and (G) purports to confer upon Federal Courts, without any constitutional authorization, the power to judge contracts made under State and/or Common law in cases where there is no diversity of citizenship.

FOR A SEVENTEENTH DEFENSE

23. In connection with a motion for a preliminary injunction heretofore brought by plaintiffs in this action, plaintiffs have falsely sworn and committed perjury in

certain of the affidavits submitted to this Court which unconscionable and unlawful conduct bars the granting of the equitable and other relief sought herein.

COUNTERCLAIM AGAINST PLAINTIFFS

Chrysler Motors Corporation for its counter-claim hereby alleges:

24. From time to time and specifically during the years 1965, 1966 and 1967, defendant, Chrysler Motors Corporation, agreed to make payments to its authorized dealers of Chrysler Corporation manufactured automobiles, including plaintiffs, for certain work actually performed and for certain parts actually installed in new Chrysler Corporation cars, pursuant to the terms of the warranty given to the owner of the new car.

25. To receive payments for these claims, the plaintiffs submitted statements to Chrysler Motors Corporation giving information regarding the work performed and the parts furnished to the particular new car.

26. Defendant, Chrysler Motors Corporation, also agreed to make payments to its authorized dealers of Chrysler Corporation automobiles, including plaintiffs, for the sale of certain parts actually sold by these authorized dealers to certain eligible purchasers.

27. To receive payment for these claims, the plaintiffs submitted statements to Chrysler Motors Corporation giving information regarding the parts sold and the name of the purchasers.

28. Defendant, Chrysler Motors Corporation, also agreed to make payments to its authorized dealers of Chrysler Corporation automobiles, including plaintiffs, relative to the amount of new car inventory the authorized dealers actually had at the time of the announcement of the new model year automobiles in the years 1966 and 1967.

29. To receive payments for these claims, the plaintiffs submitted statements, sworn to under oath, giving information regarding the amount of their new car inventory at the announcement dates.

30. During the years 1965, 1966 and 1967, among its other claims, plaintiffs submitted statements as alleged in paragraph 25 of this counterclaim but, in fact, the work was not performed and the parts not installed.

31. During the years 1965, 1966 and 1967, among its other claims, plaintiffs submitted statements as alleged in paragraph 27 of this counterclaim but, in fact, the parts were not sold to eligible purchasers.

32. During the years 1966 and 1967, among its other claims, plaintiffs submitted sworn statements as alleged in paragraph 29 but, in fact, did not have the represented new car inventory at that time and, therefore, perjured themselves.

33. Said statements alleged in paragraphs 30, 31 and 32 above contained false and untrue representations and claims and were known by plaintiffs to be false at the time they were made.

34. These statements were made by plaintiffs

for the purpose and intent of deceiving and defrauding Chrysler Motors Corporation and to induce it in reliance thereon to pay at least \$5,736.26 for claims that were not true and owing to plaintiffs.

35. Defendant, Chrysler Motors Corporation, believed such statements and claims to be true and relied thereon and was thereby induced to pay at least \$5,736.26 to plaintiffs for false and fraudulent claims.

36. By reason of the foregoing, defendant, Chrysler Motors Corporation, has been damaged in an amount not less than \$5,736.26.

WHEREFORE, defendant, Chrysler Motors Corporation, demands:

(A) Judgment in its favor dismissing the complaint and awarding it the costs and disbursements of this action including reasonable attorney's fees; and

(B) Judgment in its favor on the counterclaim in the sum of \$5,736.26 for compensatory damages and \$10,000 for exemplary damages together with the costs and disbursements.

Dated: New York, New York
March 22, 1968

KELLEY DRYE NEWHALL MAGINNES & WARREN
350 Park Avenue
New York, New York 10022

By

[Signature]

A MEMBER

Attorneys for Defendant
Chrysler Motors Corporation

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APPENDIXIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BUONO SALES, INC., a Corporation :
of the State of New Jersey, :

v. :

CHRYSLER MOTORS CORPORATION, : No. 15523
a Corporation of the State of Delaware, : Civil Action
and CHRYSLER CORPORATION, a :
Corporation of the State of Delaware. :

DOCKET ENTRIES

1962

- Feb. 27 Complaint and Demand for Jury.
Feb. 28 Notice of Allocation and Assignment.
Mar. 21 Summons with Marshall's return thereon.
Mar. 30 Answer
Mar. 30 Defendants' Notice of taking of Depositions
of Plaintiff's President.
Mar. 30 Affidavit of mailing copies of Defendants'
Notice to take Depositions and of the
Answer.
Apr. 2 Plaintiff's Notice to take Deposition of
E. C. Quinn.
Apr. 2 Plaintiff's Notice to take Deposition of
Lynn Townsend.
June 13 Deposition of Louis J. Day

Docket Entries

1963

- Aug. 28 Plaintiff's Answers to Interrogatories.
- Sept. 27 Notice of Cross-Motion for Summary Judgment in favor of Defendant Chrysler Motors Corporation.
- Oct. 9 Defendants' Answers to Interrogatories.
- Oct. 9 Supplemental Answers to Plaintiff's Interrogatories.
- Nov. 14 Transcript of Supplemental Pre-Trial Conference.
- Dec. 19 Defendants' Answers to Plaintiff's Second Set of Interrogatories.
- Dec. 19 Defendants' Additional Answer to Plaintiff's Second Set of Interrogatories.

1964

- Feb. 5 Plaintiff's Additional Answer to Defendant's Interrogatory No. 10.
- Feb. 5 Acknowledgment of Service of Copy of Plaintiff's Additional Answer to Interrogatory No. 10.
- Feb. 25 Order Amending Pre-Trial Order.
- July 31 Transcript of Testimony.

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Docket Entries

1965

- Mar. 25 Opinion Filed.
- Apr. 19 Final Judgment Filed.
- Apr. 23 Defendants' Notice of Taxation of Costs.
- Apr. 23 Affidavit of Mailing Copies of Defendants' Notice of Taxation of Costs.
- May 4 Taxation of Costs.
- May 18 Notice of Appeal.
- June 15 Consent Order Permitting the Release of Exhibits to Defendants for a Four Day Period.

COMPLAINT

Plaintiff, BUONO SALES, INC., A Corporation of the State of New Jersey, by way of Complaint against the defendants, says that:

First Cause of Action

1. Plaintiff is a corporation incorporated under the laws of the State of New Jersey and defendants are corporations incorporated under the laws of the State of Delaware. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00.

2. Plaintiff, BUONO SALES, INC., hereinafter referred to as "BUONO" is and at all times mentioned herein was a corporation organized and existing under the laws of the State of New Jersey, authorized to do business in the State of New Jersey. Plaintiff's registered agent is Louis Nussman, 136 Washington Street, Paterson, New Jersey, and plaintiff's principal place of business is at 124 Goffle Road, Hawthorne, New Jersey.

3. Defendant, CHRYSLER MOTORS CORPORATION, hereinafter referred to as "CHRYSLER MOTORS" is and at all times mentioned herein was a corporation organized and existing under the laws of the State of Delaware, authorized to do business in the State of New Jersey.

4. Defendant, CHRYSLER CORPORATION, hereinafter referred to as "CHRYSLER" is and at all times mentioned herein was a corporation organized and existing under the laws of the State of Delaware.

5. CHRYSLER MOTORS is a subsidiary of CHRYSLER and the instrumentality for the contracting of De Soto - Plymouth Dealers throughout the United States and for the sale to them of the above-named passenger automobiles for resale to the public and is

Complaint

a corporation which acts for and is under the control of CHRYSLER in connection with the distribution of said automotive vehicles.

6. BUONO has been in the business selling "CHRYSLER" products since in or about 1935 under various agreements with CHRYSLER, CHRYSLER MOTORS and other subsidiaries of CHRYSLER.

7. A Direct Dealer Agreement is now in effect between BUONO and CHRYSLER MOTORS relative to the De Soto and Plymouth passenger automobiles dated August 5, 1953, by Notice of Assignment dated October 23, 1956, effective November 1, 1956, and incorporates the provisions of "Sales Agreement between De Soto Direct Dealer and Chrysler Corporation De Soto Division" (No. 3812).

8. In contemplation of and in reliance on the Direct Dealer Agreements hereinabove set forth and pursuant to an understanding and agreement between the parties, BUONO acquired premises and constructed showroom, service department, garages, used-car lot and service parking areas.

9. In further reliance on the said Direct Dealer Agreement and in accordance with the provisions of said Direct Dealer Agreements and at the insistence of and in reliance upon representatives of CHRYSLER and CHRYSLER MOTORS, BUONO has spent large sums of money in connection with the maintenance, improvement and operation of the said premises.

10. The Agreement referred to in Paragraph 7 has never been terminated and is still in full force and effect.

11. Pursuant to the terms of the said Direct Dealer Agreement dated August 5, 1953, CHRYSLER MOTORS agreed to sell and BUONO agreed to purchase De Soto passenger automobiles, parts and accessories for re-

Complaint

sale within the sales locality specified in said Direct Dealer Agreement.

12. Pursuant to said Direct Dealer Agreement dated August 5, 1953, as well as pursuant to all prior Direct Dealer Agreements, BUONO continued to order De Soto passenger automobiles, parts and accessories from CHRYSLER MOTORS and CHRYSLER MOTORS supplied BUONO with De Soto passenger automobiles, parts and accessories, until the latter part of 1960, when CHRYSLER and CHRYSLER MOTORS discontinued production, making impossible the fulfillment of further orders.

13. BUONO has, over its years of association with CHRYSLER, CHRYSLER MOTORS and other subsidiaries of CHRYSLER, built up and enjoyed considerable customer good will with the sale of De Soto passenger automobiles resulting in obtaining a substantial number of customers who were repeat customers of De Soto passenger automobiles.

14. BUONO has, over its years of association with CHRYSLER, CHRYSLER MOTORS and other subsidiaries of CHRYSLER, through its service and parts departments built up and enjoyed considerable customer good will with De Soto owners and has sold De Soto parts and accessories in connection with the servicing and maintenance of De Soto passenger automobiles.

15. In accordance with the said Direct Dealer Agreements, BUONO has, over its years of association with CHRYSLER, CHRYSLER MOTORS and other subsidiaries of CHRYSLER, advertised its facilities and the Chrysler product, namely De Soto passenger automobiles, at great expense to BUONO and of primary benefit to CHRYSLER MOTORS and other subsidiaries of CHRYSLER.

16. On or about November 18, 1960, CHRYSLER

Complaint

and CHRYSLER MOTORS, discontinued the production of De Soto passenger automobiles, in violation of the various agreements between the parties.

17. As a result of the discontinuance of production of the DE SOTO passenger automobile by CHRYSLER and CHRYSLER MOTORS and its failure to supply BUONO with De Soto passenger automobiles, CHRYSLER MOTORS did thereby breach the said Direct Dealer Agreement dated August 5, 1953.

18. As a result of the said breach by CHRYSLER MOTORS, BUONO has suffered and will in the future suffer damages to its business and property and loss of profits in the amount of \$300,000.00.

Second Cause of Action

19. BUONO repeats the allegations of Paragraphs 1 through 17 of the Complaint as if the same were set out at length herein.

20. Said act by CHRYSLER, in discontinuing production of the De Soto passenger automobile did thereby tortiously interfere with BUONO'S contractual relations with CHRYSLER MOTORS and with BUONO'S prospective economic advantage.

21. As a direct and proximate result of the tortious interference by CHRYSLER with BUONO'S contractual relationship, BUONO has suffered and will in the future suffer damages to its business and property and loss of profits in the amount of \$300,000.00.

Third Cause of Action

22. BUONO repeats the allegations of Paragraphs 1 through 17 of the Complaint as if the same were set out at length herein.

23. In or about the early part of 1961, defendant,

Complaint

CHRYSLER, sent to all De Soto owners, including De Soto owner-customers of plaintiff, BUONO, a letter, brochure or other literature, relative to the discontinuance of De Soto and which letter, brochure or other literature in part and essence stated, "Your Dodge and Chrysler Dealer is best qualified to give your De Soto the genuine factory improved service it deserves".

24. Said act by the defendant, CHRYSLER, together with the allegations hereinbefore set forth, tortiously interfered with BUONO'S business and prospective economic advantage.

25. As a direct and proximate result of the tortious interference by CHRYSLER with BUONO'S business and prospective economic advantage, BUONO has suffered and will in the future suffer damages to its business and property and loss of profits in the amount of \$100,000.00.

Fourth Cause of Action

26. BUONO repeats the allegations of Paragraphs 1 through 17 and Paragraphs 23 and 24 of the Complaint as if the same were set out at length herein.

27. CHRYSLER MOTORS did encourage and participate with CHRYSLER in the sending of the said letter, brochure or other literature and did so with full knowledge that the same would cause injury and loss to BUONO.

28. Said act by the defendant, CHRYSLER MOTORS, tortiously interfered with BUONO'S business and prospective economic advantage.

29. As a direct and proximate result of the tortious interference by CHRYSLER MOTORS, with BUONO'S business and prospective economic advantage, BUONO has suffered and will in the future suffer damages to its business and property and loss of profits in the amount of \$100,000.00.

ComplaintFifth Cause of Action

30. BUONO repeats the allegations of Paragraphs 1 through 17, 20, 22, 24, 27 and 28 of the Complaint as if the same were set out at length herein.

31. Prior to the formal announcement by CHRYSLER and CHRYSLER MOTORS of the discontinuance of the De Soto passenger automobile, CHRYSLER and CHRYSLER MOTORS had already formulated plans for the discontinuance of the said De Soto passenger automobile and at or about said time, formulated its plans for the production of the Chrysler "Newport" which in fact it did produce and distribute at the same time that the 1961 De Soto passenger automobile was produced and distributed.

32. At or about the time that CHRYSLER and CHRYSLER MOTORS announced its decision to discontinue the De Soto passenger automobile, the reason given therefor by CHRYSLER and CHRYSLER MOTORS was that there was a shift away from the medium priced car market by consumers. If such shift were true, it was nevertheless not so great as to necessitate the abandonment of the De Soto passenger automobile. Such reason was, in fact, false and a screen to cover up the real intention and motive for the discontinuance of the De Soto passenger automobile, namely to remove the De Soto dealers and more particularly, BUONO, from the business and to concentrate the sale of CHRYSLER products, including the equivalent of the De Soto passenger automobile, in Chrysler and Dodge Dealers.

33. At the time of the discontinuance of the De Soto passenger automobile and subsequent thereto, CHRYSLER and CHRYSLER MOTORS did, in fact, produce two new passenger automobiles, namely the Chrysler "Newport" and the Dodge "Custom 880". Both of said automobiles were of the medium priced class and were

Complaint

equivalent to the 1961 De Soto passenger automobile. Said "Newport" and "Custom 880" were designed to take the place of the De Soto passenger automobile in the automobile market, despite the fact that CHRYSLER and CHRYSLER MOTORS contended that their decision to discontinue De Soto passenger automobiles was due to the shift away from the medium priced market by consumers.

34. Said "Newport" and "Custom 880" were not made available to De Soto dealers and more particularly, BUONO, despite repeated requests for same.

35. CHRYSLER and CHRYSLER MOTORS did thereby join together, conspire and combine with one another to cause a breach of the Direct Dealer Agreement and did commit the acts hereinabove set forth with the sole object, intent and purpose to interfere with BUONO's prospective economic advantage and to place BUONO in such an economic disadvantage so as to cause BUONO to terminate and discontinue its business.

36. As a direct and proximate result of the foregoing acts of CHRYSLER and CHRYSLER MOTORS, BUONO has suffered and will, in the future, suffer damages to its business and property and loss of profits in the amount of \$300,000.00.

Sixth Cause of Action

37. BUONO repeats the allegations of Paragraphs 1 through 17, 20, 23, 24, 27, 28, 31, 32, 33, 34 and 35 of the Complaint as if the same were set out at length herein.

38. CHRYSLER and CHRYSLER MOTORS failed to act in good faith in performing and complying with terms and provisions of the franchise (Direct Dealer Agreement) with BUONO and failed to act in good faith by terminating and cancelling said franchise by the discontinuance of the De Soto passenger automobile,

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Complaint

all in violation of the provisions of Title 15, U.S.C.A., Sections 1221-1225, commonly known as the "Automobile Dealers Day in Court Act".

39. By reason of the failure by CHRYSLER and CHRYSLER MOTORS as hereinabove set forth and as a direct and proximate result thereof, BUONO has suffered and sustained damages in the amount of \$300,000.00.

Demand for Damages

WHEREFORE, plaintiff, BUONO, demands judgment against the defendants, CHRYSLER and CHRYSLER MOTORS, as follows:

- A) In the amount of \$300,000.00 on the First Cause of Action;
- B) In the amount of \$300,000.00 on the Second Cause of Action;
- C) For additional punitive damages for defendant CHRYSLER'S wrongful and tortious conduct;
- D) In the amount of \$100,000.00 on the Third Cause of Action;
- E) For additional punitive damages for defendant CHRYSLER'S wrongful and tortious conduct;
- F) In the amount of \$100,000.00 on the Fourth Cause of Action;
- G) For additional punitive damages for defendant CHRYSLER MOTORS' wrongful and tortious conduct;
- H) In the amount of \$300,000.00 on the Fifth Cause of Action;
- I) In the amount of \$300,000.00 on the Sixth Cause of Action;

Complaint

- J) That this Court allow and the defendants be required to pay the full costs of this suit, including as part thereof, a reasonable fee for the services of plaintiff's attorney.
- K) That the plaintiff have such other and further relief as may be just and proper.

REUSSILLE, CORNWELL,
MAUSNER & CAROTENUTO

By: Samuel Carotenuto /s/
SAMUEL CAROTENUTO
A Member of the Firm

Attorneys for Plaintiff, BUONO
SALES, INC.

34 Broad Street
Red Bank New Jersey

DEMAND FOR JURY TRIAL

TO: CHRYSLER MOTORS CORPORATION, A Corporation of the State of Delaware and CHRYSLER CORPORATION, A Corporation of the State of Delaware, Defendants.

PLEASE TAKE NOTICE that plaintiff, BUONO SALES, INC., demands trial by jury in this action.

REUSSILLE, CORNWELL,
MAUSNER & CAROTENUTO

By: Samuel Carotenuto /s/
SAMUEL CAROTENUTO
Member of the Firm

Attorneys for Plaintiff, BUONO
SALES, INC.

34 Broad Street
Red Bank New Jersey

Defendants, Chrysler Corporation, Delaware, having in New Jersey, Company, 15 New Jersey, answering:

As to:

1. Defendants except they deny exceeds, exclusive \$10,000.

2. Defendant

3. Defendants as to all times admitted, defendant.

4. Defendant

5. Defendant except they admit a wholly owned that Chrysler automobiles and that which automobile Chrysler Motor in November, 1954, entered into direct that Chrysler Motor manufactured by

6. Answer: Defendants admit: been engaged in manufacturing of years under

ANSWER

Defendants, Chrysler Motors Corporation and Chrysler Corporation, corporations of the State of Delaware, having their respective registered offices in New Jersey at the offices of The Corporation Trust Company, 15 Exchange Place, Jersey City, New Jersey, answering the Complaint of plaintiff herein say:

As to First Cause of Action

1. Defendants admit the allegations of Paragraph 1, except they deny that the matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.
2. Defendants admit the allegations of Paragraph 2.
3. Defendants admit the allegations of Paragraph 3 as to all times after November, 1956. Except as so admitted, defendants deny the allegations of Paragraph 3.
4. Defendants admit the allegations of Paragraph 4.
5. Defendants deny the allegations of Paragraph 5, except they admit that Chrysler Motors Corporation is a wholly owned subsidiary of Chrysler Corporation; that Chrysler Corporation manufactured De Soto automobiles and manufactures Plymouth automobiles, which automobiles it respectively sold and sells to Chrysler Motors Corporation; that since its formation in November, 1956, Chrysler Motors Corporation entered into direct dealer agreements with dealers and that Chrysler Motors Corporation sells automobiles manufactured by Chrysler Corporation to such dealers.
6. Answering the allegations of Paragraph 6, defendants admit that plaintiff or its predecessors have been engaged in the business of selling automobiles manufactured by Chrysler Corporation for a number of years under successive agreements up to November,

Answer

1956 with Chrysler Corporation or its subsidiaries and since November, 1956 with Chrysler Motors Corporation. Except as so stated, defendants do not have sufficient knowledge or information at hand sufficient to form a belief with respect to the allegations of Paragraph 6.

7. Answering the allegations of Paragraph 7, defendants refer to the documents hereto attached as Exhibit A (which are hereinafter sometimes referred to as "direct dealer agreement") and also refer to the statements contained in Paragraph 12 hereof to set forth the current relationship of plaintiff to Chrysler Motors Corporation. Plaintiff has also been doing business with Chrysler Motors Corporation under a direct dealer agreement relating to Valiant automobiles. To the extent, if any, that the allegations of Paragraph 7 of the Complaint are deemed inconsistent with the foregoing, they are denied.

8. Defendants deny the allegations of Paragraph 8, except that they admit that plaintiff and/or its predecessors executed successive direct dealer agreements, the most current of which being attached hereto as Exhibit A, and that plaintiff maintained a showroom and certain other facilities.

9. Defendants deny the allegations of Paragraph 9.

10. Answering the allegations of Paragraph 10, defendants refer to and incorporate herein the statements contained in Paragraph 12 hereof as setting forth the current relationship of the parties.

11. Defendants deny the unqualified allegations of Paragraph 11 and refer to the direct dealer agreement between plaintiff and Chrysler Motors Corporation, a true copy of which is hereto attached as Exhibit A, for an accurate statement of its terms and conditions.

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Answer

12. Defendants deny the allegations of Paragraph 12, except they state that pursuant to the direct dealer agreement attached hereto as Exhibit A, plaintiff has ordered De Soto and Plymouth passenger automobiles, parts and accessories from Chrysler Motors Corporation (as well as Valiant automobiles under the direct dealer agreement relating thereto) and that Chrysler Motors Corporation has supplied plaintiff with De Soto and Plymouth and Valiant passenger automobiles, parts and accessories until, as to the De Soto line, the latter part of 1960, when Chrysler Corporation discontinued production of said line making impossible the fulfillment by Chrysler Motors Corporation of further orders for the De Soto line except for parts and accessories and plaintiff was so advised.

13. Defendants deny the allegations of Paragraph 13.

14. Defendants deny the allegations of Paragraph 14, except they admit that plaintiff and/or its predecessors sold De Soto parts and accessories in connection with the servicing and maintenance of De Soto passenger automobiles.

15. Defendants deny the allegations of Paragraph 15, except they have no knowledge or information sufficient to form a belief as to the extent to which plaintiff advertised its facilities and the De Soto and/or Plymouth and/or Valiant passenger automobiles.

16. Defendants deny the allegations of Paragraph 16, except they admit that Chrysler Corporation discontinued the production of De Soto passenger automobiles on or about November 18, 1960.

17. Defendants deny the allegations of Paragraph 17.

18. Defendants deny the allegations of Paragraph 18.

Answer

As to Second Cause of Action

19. Defendants repeat and make a part hereof their answers to the allegations contained in Paragraphs 1 through 17, inclusive, of the Complaint.

20. Defendants deny the allegations of Paragraph 20.

21. Defendants deny the allegations of Paragraph 21.

As to Third Cause of Action

22. Defendants repeat and make a part hereof their answers to the allegations contained in Paragraphs 1 through 17, inclusive, of the Complaint.

23. Defendants deny the allegations of Paragraph 23.

24. Defendants deny the allegations of Paragraph 24.

25. Defendants deny the allegations of Paragraph 25.

As to Fourth Cause of Action

26. Defendants repeat and make a part hereof their answers to the allegations contained in Paragraphs 1 through 17, inclusive, and Paragraphs 23 and 24 of the Complaint.

27. Defendants deny the allegations of Paragraph 27.

28. Defendants deny the allegations of Paragraph 28.

29. Defendants deny the allegations of Paragraph 29.

As to Fifth Cause of Action

30. Defendants repeat and make a part hereof their answers to the allegations contained in Paragraphs 1 through 17, inclusive, and Paragraphs 20, 23, 24, 27 and 28 of the Complaint.

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Answer

31. Defendants deny the allegations of Paragraph 31 except to state that plans to discontinue the De Soto line by Chrysler Corporation necessarily preceded by a short period of time the public announcement of such plans to discontinue said line.

32. Defendants deny the allegations of Paragraph 32, except they admit that one of the reasons given for the discontinuance of the De Soto passenger automobile was that there was a shift away from the medium priced car market by consumers.

33. Defendants deny the allegations of Paragraph 33.

34. Answering the allegations of Paragraph 34, defendants admit that the Chrysler Newport and the Dodge Custom 880 were not made available to De Soto-Plymouth dealers.

35. Defendants deny the allegations of Paragraph 35,

36. Defendants deny the allegations of Paragraph 36.

As to Sixth Cause of Action

37. Defendants repeat and make a part hereof their answers to the allegations contained in Paragraphs 1 through 17, inclusive, and Paragraphs 20, 23, 24, 27, 28, 31, 32, 33, 34 and 35 of the Complaint.

38. Defendants deny the allegations of Paragraph 38.

39. Defendants deny the allegations of Paragraph 39.

First Separate Defense to All Counts

The Complaint fails to state a claim upon which relief can be granted.

AnswerSecond Separate Defense to All Counts

Plaintiff has failed to provide adequate representation for defendants' products, and has failed to perform its duties and obligations to defendant, Chrysler Motors Corporation, under the direct dealer agreement attached hereto as Exhibit A.

First Separate Defense as to Count Based
on "Automobile Dealer Suits Against
Manufacturers" Act

The "Automobile Dealer Suits Against Manufacturers" statute, 15 U.S.C. §§ 1221 to 1225, under which this action is brought, is unconstitutional because:

A. The statute deprives defendants of their liberty and property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, in that it:

- (1) is unintelligible, incomprehensible, vague, indefinite and uncertain, both in general and in its use of the term "good faith";
- (2) arbitrarily discriminates between automobile manufacturers and dealers (including defendants and plaintiff) and other manufacturers and dealers;
- (3) arbitrarily discriminates between automobile manufacturers (including defendants) and automobile dealers (including plaintiff) by creating a right of action for dealers against manufacturers, but not for manufacturers against dealers;
- (4) arbitrarily and unreasonably restricts defendants' freedom to contract and to provide in contracts the terms and conditions of their obligations and the circumstances under which their

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Plaintiff is
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Answer

contractual rights and obligations may be terminated;

- (5) purports to establish a right of automobile dealers to damages for acts of defendants in performing their contracts for such dealers;
- (6) impairs the obligation of automobile manufacturers' (including defendants') contracts with their dealers; and
- (7) serves no public purpose or interest;

B. The statute delegates to the judiciary the legislative powers of the Congress, in violation of Article I, section 1, and Article I, section 8, paragraph 18, of the Constitution of the United States; and

C. The statute exceeds the power of Congress over interstate commerce under Article I, section 8, paragraph 3 of the Constitution of the United States, exceeds any power of Congress under the Constitution of the United States and invades the powers reserved to the states under the Tenth Amendment to the Constitution of the United States.

Second Separate Defense as to Count Based
on "Automobile Dealer Suits Against
Manufacturers" Act

Plaintiff has failed to act in good faith under the direct dealer agreement attached hereto as Exhibit A and within the meaning of the "Automobile Dealer Suits Against Manufacturers" Act, 15 U.S.C. §§ 1221 to 1225.

PITNEY, HARDIN & KIPP
By Frank C. O'Brien
FRANK C. O'BRIEN
A Member of the Firm
Attorneys for Defendants
500 Broad Street
Newark 2, New Jersey

331 a

20a

Answer

EXHIBIT A

De Soto-Plymouth Direct
Dealer Agreement

(See Opposite)

332 a

DE SOTO--PLYMOUTH



DIRECT DEALER AGREEMENT

TERMS AND PROVISIONS

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DE SOTO-PLYMOUTH DIRECT DEALER AGREEMENT

Agreement by and between _____

located at: _____
(Street) (City) (State)

a(n) _____, below called DIRECT
(Individual, Corporation or Partnership)

DEALER, and Chrysler Motors Corporation, a Delaware corporation, below called
DE SOTO-PLYMOUTH.

INTRODUCTION

The purpose of the relationship established by this agreement is to provide a means for the sale and service of De Soto and Plymouth passenger cars and De Soto and Plymouth passenger car parts and accessories in a manner that will best serve the interests of the retail customer and be of benefit to DIRECT DEALER and DE SOTO-PLYMOUTH.

While the undertakings of this relationship are set forth in the provisions that follow, their success rests on a recognition of the mutuality of interests of DIRECT DEALER and DE SOTO-PLYMOUTH, and

a spirit of understanding and cooperation by both parties in the day to day performance of their respective functions.

It is the mutual goal of this relationship to promote the sale of De Soto and Plymouth products by maintaining and advancing their excellence and reputation and by earning, holding, and furthering the public regard for DE SOTO-PLYMOUTH and all De Soto and Plymouth Dealers.

To achieve these purposes DIRECT DEALER and DE SOTO-PLYMOUTH agree as follows:

1.

SALES LOCALITY

DIRECT DEALER will have the non-exclusive right, subject to the provisions of this agreement, to purchase from DE SOTO-PLYMOUTH for resale at retail (or to other authorized De Soto and Plymouth Dealers) new De Soto and Plymouth passenger cars and De Soto and Plymouth passenger car parts and accessories in the following Sales Locality:

*

2.

DIRECT DEALER'S MANAGEMENT

DE SOTO-PLYMOUTH has entered into this agreement relying on the active, substantial and continuing personal participation in the management of DIRECT DEALER'S organization by

NAME

POSITION

3.

336 a

DIRECT DEALER'S CAPITAL STOCK OR PARTNERSHIP INTEREST

If DIRECT DEALER is a corporation or partnership, DIRECT DEALER represents and agrees that the persons named below own beneficially, and will continue to own beneficially (except for transfers not effecting a change in majority control or interest) unless DE SOTO-PLYMOUTH agrees otherwise in writing, the capital stock or partnership interest of DIRECT DEALER in the percentages indicated below:

NAME	VOTING STOCK	NON-VOTING STOCK	PARTNERSHIP INTEREST
_____	_____ %	_____ %	_____ %
_____	_____ %	_____ %	_____ %
_____	_____ %	_____ %	_____ %
_____	_____ %	_____ %	_____ %
Total (must amount to at least 90%)	_____ %	_____ %	_____ %
* _____			

4.

TERMS AND PROVISIONS

The De Soto-Plymouth Direct Dealer Agreement Terms and Provisions marked "Form 57-DS-P" constitutes a part of this agreement with the same force and effect as if set forth at length herein, and the term "this agreement" includes said De Soto-Plymouth Direct Dealer Agreement Terms and Provisions.

* _____

5.

FORMER AGREEMENTS AND WAIVER, MODIFICATION OR ASSIGNMENT OF THIS AGREEMENT

This De Soto-Plymouth Direct Dealer Agreement, including the De Soto-Plymouth Direct Dealer Agreement Terms and Provisions, Form 57-DS-P, incorporated herein, is the entire agreement between the parties relating to the purchase by DIRECT DEALER of new De Soto and Plymouth passenger cars and De Soto and Plymouth passenger car parts and accessories from DE SOTO-PLYMOUTH for resale, and it cancels and supersedes all earlier agreements, written or oral, between DE SOTO-PLYMOUTH or Chrysler Corporation and DIRECT DEALER relating to the purchase by DIRECT DEALER of De Soto and Plymouth passenger cars and De Soto and Plymouth passenger car parts and accessories.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

COPY RECEIVED
FELLEY, CHIEF, NEWHALL, MAGINNIS & WARREN
BY J. W. (Stunkard) / 8/66
DEC 9 1936

MAX LEVENSON and MOLLY S. LEVENSON,
copartners doing business under the
firm name and style of MAX LEVENSON,

Plaintiffs

-against-

CHRYSLER CORPORATION and CHRYSLER
MOTORS CORPORATION,

Defendants

ATTY'S FOR

ENTERED	
Diary	<i>gm</i>
Register	<i>gm</i>

Plaintiffs, by their attorney, complaining of the
defendants, respectfully show to this Court and allege:

FOR A FIRST CAUSE OF ACTION:

1. That at all of the times hereinafter
mentioned the plaintiffs were and are residents of the
County of Nassau and were copartners doing business under
the firm name and style of MAX LEVENSON.

2. Upon information and belief, that, at all of
the times hereinafter mentioned, the defendant, CHRYSLER
CORPORATION, was and still is a Delaware corporation.

3. Upon information and belief, that, at all of
the times hereinafter mentioned, the defendant, CHRYSLER
CORPORATION, was and still is duly authorized to do business
in the State of New York and had and still has an office and
place of business in the State of New York.

4. Upon information and belief, that, at all of
the times hereinafter mentioned, the defendant, CHRYSLER
CORPORATION, was and still is a manufacturer of motor

vehicles for sale or distribution in the State of New York.

5. Upon information and belief, that, at all of the times hereinafter mentioned, the defendant, CHRYSLER MOTORS CORPORATION, was and still is a Delaware corporation.

6. Upon information and belief, that, at all of the times hereinafter mentioned, the defendant, CHRYSLER MOTORS CORPORATION, was and still is duly authorized to do business in the State of New York and had and still has an office and place of business in the State of New York.

7. Upon information and belief, that, at all of the times hereinafter mentioned, the defendant, CHRYSLER MOTORS CORPORATION, was and still is a manufacturer of motor vehicles for sale or distribution in the State of New York.

8. That, on or about May 1, 1945, the plaintiffs and the defendant, CHRYSLER CORPORATION, entered into an agreement by the terms of which, amongst other things therein provided for, the plaintiffs were appointed as and agreed to be a dealer for the sale of the said defendant's automobiles, parts, accessories and equipment.

9. That, following the execution of the agreement between the plaintiffs and the defendant, CHRYSLER CORPORATION, the plaintiffs commenced doing business as a dealer for all kinds of the said defendant's automobile products.

10. That thereafter, upon information and belief, the performance of the terms and conditions of the aforesaid agreement was also assumed by the defendant, CHRYSLER MOTORS CORPORATION.

11. That the agreement of the plaintiffs was terminated on October 3, 1960.

12. That, during the year 1956, an Act was duly passed by the Legislature of the State of New York and enacted into law, known as Article 11-A of the General Business Law entitled "MOTOR VEHICLE MANUFACTURERS", which Act became in operation and effect on October 1, 1956.

13. That, prior to and from October 1, 1956 and during all of the times herein stated, the plaintiffs were a dealer within the meaning of the said Act.

14. That the defendants violated the provisions of the said Act in that the defendants terminated the dealership of the plaintiffs without cause.

15. That, by reason of the foregoing, the plaintiffs have been damaged in the sum of \$1,000,000.00.

WHEREFORE, plaintiffs demand judgment against the defendants for the sum of \$1,000,000.00 with interest from the 3rd day of October, 1960 together with the costs and disbursements of this action.

AS AND FOR A SECOND CAUSE OF ACTION:

16. Plaintiffs repeat, reiterate and re-allege paragraphs numbered "1" thru "10" inclusive of the First Cause of Action with the same force and effect as if fully set forth at length herein.

17. That, in and by the said agreement, amongst other things therein provided for, the plaintiffs undertook to be a dealer for all kinds of the defendants' automobile products and the defendants agreed to sell all kinds of its said products to the plaintiffs.

18. That the plaintiffs have duly performed all the conditions of said agreement on their part.

19. That the defendants have failed and neglected to perform the conditions of the said agreement on their part in that they failed to deliver cars when ordered by the plaintiffs, delayed shipments of plaintiffs' orders for cars, refused to sell all kinds of their automobile products to the plaintiffs, refused to give the plaintiffs the same or similar considerations as those given to other dealers and refused to give the plaintiffs the same or similar insurance benefits as those given to other dealers and failed to abide by the terms of the aforesaid contract and otherwise breached the terms thereof.

20. That, by reason of the foregoing, the plaintiffs have been damaged in the sum of \$1,000,000.00.

WHEREFORE, plaintiffs demand judgment against the defendants in the sum of \$1,000,000.00 with interest from the 3rd day of October, 1960, together with the costs and disbursements of this action.

S. LAWRENCE ATKINS
Attorney for Plaintiffs
Office and P.O. Address
170 Broadway
New York, N. Y. 10038

341 a

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ENTERED
Clary <u>CHD</u>
Register <u>TJM</u>

-----x
MAX LEVENSON and MOLLY S. LEVENSON,
copartners doing business under the
firm name and style of MAX LEVENSON,

Plaintiffs,

-against-

CHRYSLER CORPORATION and CHRYSLER
MOTORS CORPORATION,

Defendants.
-----x



: ANSWER

Defendants Chrysler Corporation and Chrysler
Motors Corporation by their attorneys, Kelley Drye Newhall
Maginnes & Warren as and for their answer to the complaint
herein:

1. Deny knowledge or information sufficient to
form a belief as to the allegations contained in paragraph
"1" of the complaint.

2. Deny each and every allegation contained in
paragraphs "7", "13", "14", "15", "18", "19", and "20" of
the complaint.

3. Deny each and every allegation contained in
paragraphs "8", "9" "10" and "17" of the complaint except
that they admit that on May 1, 1945 plaintiff and defendant
Chrysler Corporation entered into an agreement regarding
the purchase, sale and servicing of motor vehicles which
agreement was assigned by defendant Chrysler Corporation to
defendant Chrysler Motors Corporation as of Novemb 1, 1956

and that plaintiff began to act pursuant to said agreement and respectfully refer the Court to said agreement which will be adduced upon the trial herein for a full and complete statement of the terms and conditions thereof.

4. Deny each and every allegation contained in paragraph "11" of the complaint except that they admit that on July 5, 1960 defendant Chrysler Motors Corporation delivered a letter to plaintiff which was approved by defendant Chrysler Corporation notifying plaintiff, among other things, of the defendants' election to terminate effective 90 days from July 5, 1960 an agreement entered into between plaintiff and defendant Chrysler Corporation dated May 1, 1945 which agreement was assigned by defendant Chrysler Corporation to defendant Chrysler Motors Corporation on November 1, 1956 and respectfully refers the Court to said letter which will be adduced upon the trial herein for a full and complete statement of the contents thereof and said agreement was terminated in accordance with the said letter and agreement.

FOR A FIRST DEFENSE TO THE
FIRST AND SECOND CAUSES OF ACTION

5. The complaint fails to state any claim against the defendants upon which relief can be granted.

FOR A SECOND DEFENSE TO THE
FIRST CAUSE OF ACTION

6. Any rights of action that may be set forth in paragraphs "1" through "15" of the complaint did not accrue three years next before the commencement of this action.

FOR A THIRD DEFENSE TO THE
FIRST AND SECOND CAUSE OF ACTION

7. Any rights of action that may be set forth in paragraphs "1" through "15" and "16" through "20" of the complaint did not accrue six years next before the commencement of this action.

FOR A FOURTH DEFENSE OF THE
FIRST CAUSE OF ACTION

8. That Article 11-A of the General Business Law of the State of New York entitled "Motor Vehicle Manufacturers", Sections 195-198 on its face and as it is sought to be applied herein is illegal, unconstitutional, and void in that it is incapable of being complied with due to the vagueness and uncertainty of the language contained therein; in that it is arbitrary and discriminates against a class of persons, of which defendants Chrysler Motors Corporation and Chrysler Corporation are members and denies them equal protection under the laws; in that it purports to deprive a class of persons, of which said defendants are members, of property without due process of law; in that it purports to confer a right to damages against a manufacturer by the exercise of its contractual rights; in that it purports to impair the obligation of

contracts; in that it impairs the manufacturers' free choice of dealers and interferes with the conduct of their business; in that it purports to authorize the taking of property without just compensation all of which is in violation of the Fourteenth Amendment of the Constitution of the United States.

FOR A FIFTH DEFENSE TO THE
FIRST CAUSE OF ACTION

9. That Article 11-A of the General Business Law of the State of New York entitled "Motor Vehicle Manufacturers", Sections 195-198 on its face and as it is sought to be applied herein is illegal, unconstitutional, and void and violates Article 1, Sections 6 and 11 of the Consitution of the State of New York in that it is incapable of being complied with due to the vagueness and uncertainty of the language contained therein; in that it is arbitrary and discriminates against a class of persons, of which defendants, Chrysler Motors Corporation and Chrysler Corporation are members and denies them equal protection under the laws; in that it purports to deprive a class of persons, of which said defendants are members of property without due process of law; in that it purports to confer a right to damages against a manufacturer by the exercise of its contractual rights; in that it purports to impair the obligation of contracts; in that it impairs the manufacturers' free choice of dealers and interferes with the conduct of their business; in that it purports to authorize the taking of property without just compensation.

FOR A SIXTH DEFENSE TO THE
FIRST CAUSE OF ACTION

10. Article 11-A of the General Business Law of the State of New York, entitled "Motor Vehicle Manufacturers", Sections 195-198, on its face and as it is sought to be applied herein is illegal, unconstitutional and void and violates Article 1, Section 8 of the Constitution of the United States in that it purports to regulate and imposes an undue burden upon interstate commerce in an area over which the Congress of the United States has exclusive power and which it has exclusively occupied with the Automobile Dealers Franchise Act, 70 Stat. 1125-1128, United States Code, Title 15, §1221-1225, and, in that its provisions are different from and in conflict with the Automobile Dealers Franchise Act, 70 Stat. 1125-1128, United States Code, Title 15, §1221-1225.

FOR A SEVENTH DEFENSE TO THE
FIRST AND SECOND CAUSES OF ACTION

11. The consideration agreed to be given to defendants by plaintiffs for the agreement of defendants as alleged in the complaint, among other things, was for plaintiffs to establish a suitable place of business and to stock, to promote and develop the sale of defendants' products.

12. That defendants duly performed all of the conditions of said agreement on their part.

13. That plaintiffs failed and refused to perform the conditions of said agreement on their part in that among other things they failed to provide adequate

and well-stocked facilities, place of business, and adequate personnel, and failed to promote and develop the sale of defendants' products.

14. As a result thereof, there has been and is a failure on the part of the plaintiffs to give the consideration which they agreed to give to defendants for their said agreement.

FOR AN EIGHTH DEFENSE TO THE
FIRST AND SECOND CAUSES OF ACTION

15. Plaintiffs breached the agreement alleged in the complaint and abandoned performance thereunder and refused to perform the considerations required of them under the said agreement.

WHEREFORE, defendants demand judgment dismissing the complaint herein together with the costs and disbursements of this action together with reasonable attorneys' fees.

KELLEY DRYE NEWHALL MAGINNES & WARREN
Attorneys for Defendants
Office and P.O. Address
350 Park Avenue
New York, New York 10022

347 a

COPY RECEIVED
KELLEY, DRYE, NEWHALL, MAGINNIS & WILSON
BY *[Signature]* 2/21/67

FEB 23 1967

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

ATTY'S FOR

RITWAY MOTORS, INC.,

Plaintiff

-against-

VERIFIED COMPLAINT

CHRYSLER CORPORATION,

Defendant

ENTERED

Diary *25*
Register *25*

PLAINTIFF, as and for its Complaint by its attorney,
JEROME M. KUTNER, ESQ., respectfully alleges as follows:

FIRST: That at all times hereinafter mentioned,
plaintiff was a domestic corporation existing under and by virtue
of the laws of the State of New York.

SECOND: That at all times hereinafter mentioned, the
defendant was and still is a foreign corporation authorized to
do business in the State of New York.

THIRD: That at all times hereinafter mentioned,
plaintiff maintained its place of business at 600 Bushwick Avenue
Brooklyn, New York.

FOURTH: That sometime during the month of March, 1954,
this plaintiff entered into a valid and binding franchise
Agreement with the defendant for the purpose of selling new
DeSoto and Plymouth automobiles to the public at its duly author-
ized location, 600 Bushwick Avenue, Brooklyn, New York.

FIFTH: That sometime during the latter part of 1959,
and on or about January, 1960, the plaintiff through rumor and
various unofficial notifications, was advised that the manu-
facture and production of the DeSoto line automobile would be
discontinued.

SIXTH: That the plaintiff, in order to ascertain the veracity of the unofficial notices and rumors about the discontinuance of the DeSoto line, thereafter communicated with the defendant, its agents, servants and/or employees, and further, an officer of plaintiff's Corporation went to Detroit, Michigan, and saw one, Byron Nichols, a representative of the defendant, and was advised that plans for the manufacture and production of the DeSoto line were made for many years to come, and that based upon this representation, the plaintiff continued to purchase parts and special tools and increased its advertising and vigorously pursued the further merchandising and sale of the DeSoto line automobile.

SEVENTH: That further, sometime in August of 1960, plaintiff was advised of the formal specifications of the 1961 DeSoto line, and based upon this formal notification, again projected his requirements for the 1961 DeSoto line again increasing the purchase of parts and special tools and increased advertising. That thereafter, the plaintiff received formal notification from the defendant by blown up Western Union telegram sometime in January or February of 1960, that the DeSoto line would be continued in all respects, and any rumors regarding the discontinuance of the DeSoto line were groundless.

EIGHTH: That sometime during November of 1960, after plaintiff had already purchased its supply of 1961 automobiles for the purpose of resale, there were still recurring rumors concerning the discontinuance of the DeSoto line, and finally on or about December of 1960, plaintiff ascertained through newspapers and radio communications, that the manufacture and production of the DeSoto line was to be discontinued and that the manufacture and production of same was to cease.

NINTH: That plaintiff received formal notification from the defendant for the first time on or about February, 1961,

and at no time prior thereto that the DeSoto line automobile was to be discontinued.

TENTH: That thereafter, after the defendant formally notified the plaintiff of the discontinuance of the manufacture and production of the DeSoto line, the defendant proceeded to solicit all previous DeSoto owners in order to have them purchase the Chrysler motor vehicles, and in this solicitation letter, was a coupon to be redeemable on the purchase of a 1961, 1962 or 1963 Chrysler automobile.

ELEVENTH: That as a result of all of the aforementioned, the plaintiff, RITEWAY MOTORS, INC., lost the loyalty of its DeSoto owners, and as a result thereof, the said plaintiff, RITEWAY MOTORS, INC., found itself in financial difficulty, and was compelled to discontinue its business on or about March, 1961.

TWELFTH: That the defendant, CHRYSLER CORPORATION, knew of the discontinuance of the DeSoto line for a long time prior to January 1960, and made plans for the discontinuance of the said DeSoto line as part of the general plans made for the future production of its motor vehicles; and that the said defendant, CHRYSLER CORPORATION, knowing this, permitted the said plaintiff, RITEWAY MOTORS, INC., to continue to make such plans and expend such monies to its financial detriment.

THIRTEENTH: That the said plaintiff, RITEWAY MOTORS, INC., as an authorized franchised dealer, should have been apprised of any and all plans to discontinue the said DeSoto line in advance of the formal discontinuance, so that proper future plans could have been made and anticipated by the said plaintiff, RITEWAY MOTORS, INC.

FOURTEENTH: That the said plaintiff, RITEWAY MOTORS, INC., relying upon the representations made by the defendant, its agents,

servants and/or employees as to the continuance of the production and manufacture of the DeSoto line, continued to expend diverse sums of money.

FIFTEENTH: That it was incumbent upon the defendant, CHRYSLER CORPORATION, to notify the plaintiff, RITEWAY MOTORS, INC., in advance of any and all plans with regard to the discontinuance of the De Soto line, and in failing to do so, caused this plaintiff to suffer financial losses in the amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

WHEREFORE, plaintiff demands judgment against the defendant, CHRYSLER CORPORATION, in the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS, together with the costs and disbursements of this action.

JEROME H. KUTNER, ESQ.
Attorney for Plaintiff
Office & P. O. Address
2900 Hempstead Turnpike
Levittown, New York 11753

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

YOUNG MOTORS, INC.,

Plaintiff,

-against-

CHRYSLER MOTORS CORPORATION, HERBERT S. FARB, INC., CHRYSLER MANHATTAN COMPANY, INC., CHRYSLER PRODUCTS EAST SIDE SERVICE CENTER, INC., and MANNION DODGE, INC.,

Defendants.

COMPLAINT

Civ. 2003

PLAINTIFF
DEMANDS A
TRIAL BY
JURY

The plaintiff, Young Motors, Inc., by its attorneys SHATKIN & COOPER, ESQS., as and for its complaint against the defendants alleges as follows:

JURISDICTION-DESCRIPTION
OF PLAINTIFF

FIRST: That at all times hereinafter mentioned the plaintiff was and still is a domestic corporation organized and existing under and by virtue of the Laws of the State of New York, with its principal office and place of business located in the County of Kings, City and State of New York, and in the Eastern District of New York.

DESCRIPTION OF DEFENDANTS

SECOND: That at all times hereinafter mentioned, the defendant Chrysler Motors Corporation was and still is a corporation organized and existing under the Laws of the State of Delaware, and that it maintains its principal office for the conduct of its business in the State of New York, at 401 Theodore Fremd Avenue, City of Rye, County of Westchester, State of New York.

THIRD: That at all times hereinafter mentioned the defendant Herbert S. Faris, Inc., was and still is a corporation organized and existing under the Laws of the State of New York and that it maintains its principal office for the conduct of its business in the County, City and State of New York.

FOURTH: That at all times hereinafter mentioned the defendant Chrysler Products East Side Service Center, Inc., was and still is a corporation organized and existing under the Laws of the State of New York, and that it maintains its principal office for the conduct of its business in the County, City and State of New York.

FIFTH: That at all times hereinafter mentioned the defendant Chrysler Manhattan Company, Inc., was and still is a corporation organized and existing under the Laws of the State of Delaware, and that it maintains its principal office for the conduct of its business in the County, City and State of New York.

SIXTH: That at all times hereinafter mentioned the defendant Mannion Dodge, Inc., was and still is a corporation organized and existing under the Laws of the State of New York and that it maintains its principal office for the conduct of its business in the County, City and State of New York.

NATURE OF BUSINESS INVOLVED

SEVENTH: That at all times hereinafter mentioned the defendant Chrysler Motors Corporation was engaged in the business of manufacturing, selling and distributing automobiles under the various names of Plymouth, DeSoto, Dodge and Chrysler.

EIGHTH: That at all times hereinafter mentioned Herbert S. Faris, Inc., was a dealer under contract to the Chrysler Motors Corporation engaged in the business of selling and servicing Chrysler Motors Corporation automobiles, and specifically DeSoto and Plymouth.

NINTH: That at all times hereinafter mentioned Chrysler Manhattan Company, Inc., was a dealer under contract to the Chrysler Motors Corporation engaged in the business of selling and servicing Chrysler Motors Corporation's automobiles.

TENTH: That at all times hereinafter mentioned Harmon Dodge, Inc., was a dealer under contract to the Chrysler Motors Corporation engaged in the business of selling and servicing Chrysler Motors Corporation's automobiles, specifically Dodge.

ELEVENTH: That at all times hereinafter mentioned Chrysler Products East Side Service Center, Inc., was under contract to the Chrysler Motors Corporation engaged in the business of servicing cars manufactured and sold by the dealers of Chrysler Motors Corporation.

**ACT UNDER WHICH THE
ACTION IS BROUGHT**

TWELFTH: That the cause of action herein alleged arises and is based upon an ACT OF CONGRESS, approved June 19, 1936, 49 Statutes 1823, 1823 (UNITED STATES CODE ANNOTATED, Title 15, Section 13 and 13A), commonly known as the Robinson-Patman Act.

THIRTEENTH: That the plaintiff is and at all times hereinafter mentioned has been the owner of a retail sales and service center for DeSoto and Plymouth automobiles manufactured by the Chrysler Motors Corporation and located at 1679 Bedford Avenue in the Borough of Brooklyn, City and State of New York.

FOURTEENTH: That at all times hereinafter mentioned plaintiff has sold and offered for sale to the retail trade the automobiles sold and distributed by the defendant Chrysler Motors Corporation to this plaintiff. That many of the plaintiff's customers resided in the State of New York and other states of the United States.

FIFTEENTH: That at all times hereinafter mentioned the defendant Chrysler Motors Corporation has been and is now engaged in the sale and distribution in interstate commerce of the automobiles set forth in Paragraph Seventh above.

SIXTEENTH: That at all times hereinafter mentioned the defendant Herbert S. Paris, Inc., Chrysler Manhattan Company, Inc., and Mannion Dodge, Inc., have sold and distributed as well as serviced the defendant Chrysler Motors Corporation's automobiles for the retail trade in the State of New York and elsewhere in the United States in competition with the plaintiff.

SEVENTEENTH: That at all times hereinafter mentioned defendant Chrysler Products East Side Service Center, Inc., has serviced products manufactured by Chrysler Motors Corporation in competition with the plaintiff in the State of New York and more particularly in and about the environs of the City of New York.

**AGREEMENT WITH THE DEFENDANT
CHRYSLER MOTORS CORPORATION**

EIGHTEENTH: The plaintiff has been a dealer pursuant to written contract in the defendant's Chrysler Motors Corporation's products since 1941 under the terms of which the defendant Chrysler Motors Corporation designated the plaintiff as one of its agencies to sell its products consisting of DeSotos and Plymouths and designated

the plaintiff as a service center for Chrysler Motors Corporation products, and these products were sold and distributed by the defendant Chrysler Motors Corporation to the plaintiff for resale by the plaintiff in its establishment, and the plaintiff did engage in the servicing of the said products. That said agency is still in full force and effect.

DISCRIMINATION

NINETEENTH: That during the time that the plaintiff maintained such agency for the sale, distribution and servicing of the defendant Chrysler Motors Corporation's products, that the defendant Chrysler Motors Corporation sold and distributed its said products to other customers of the defendant Chrysler Motors Corporation who were in competition with the plaintiff, said customers being located in the State of New York and in other states of the United States.

TWENTIETH: That at all times herein mentioned and during the period of the sale and distribution of the automobiles hereinbefore mentioned and in the course of commerce as aforesaid the defendant Chrysler Motors Corporation by letter-agreement of September 23, 1937, unlawfully and in violation of the statutes set forth above agreed and did undertake to furnish to the defendant Herbert S. Paris, Inc., monthly discounts and/or rebates in the sum of \$1,650.00 per month. That thereafter by letter-agreement dated November 4, 1937, the defendant Chrysler Motors Corporation accelerated the rebate and discount so that Herbert S. Paris, Inc., received the sum of \$19,300.00; that thereafter by letter-agreement of April 25, 1938, the defendant Chrysler Motors Corporation in addition to the aforesaid \$19,300.00 rebate undertook to pay to the defendant Herbert S. Paris, Inc., the sum of \$2,600.00 per month and accelerated the sum by making payment to Herbert S. Paris, Inc., in the sum of \$30,000.00 for the

period May 1, 1953 to April 30, 1959. That on or about April 23, 1959 Chrysler Motors Corporation undertook to guarantee the debts of Herbert S. Paris, Inc., to C. I. T. Corp., in the sum of \$30,000.00.

TWENTY-FIRST: That the defendant Chrysler Motors Corporation heretofore agreed with the defendant Manton Dodge, Inc., to pay to the defendant Manton Dodge, Inc., as rebates and/or discounts the sum of \$20,000.00 per year.

TWENTY-SECOND: That the defendant Chrysler Motors Corporation has undertaken to subsidize Chrysler Manhattan Company, Inc., in the sale and servicing of automobiles in that all losses occasioned in the sale and servicing of said automobiles by Chrysler Manhattan Company, Inc., were and are absorbed by the Chrysler Motors Corporation.

TWENTY-THIRD: That the Chrysler Motors Corporation heretofore secured a lease on the premises presently occupied by the Chrysler Products East Side Service Center, Inc., which the defendant Chrysler Motors Corporation has leased to Chrysler Products East Side Service Center, Inc., and Chrysler Products East Side Service Center, Inc., occupies the space free of rent or at a rental far below which is charged for like space in that area and that such arrangement constitutes a rebate and discount in violation of the statutes aforesaid.

TWENTY-FOURTH: That the defendant Chrysler Motors Corporation had discriminated against this plaintiff in the price of the goods and merchandise sold to it, and having paid and in having contracted to pay to competitors of the plaintiff located in the State of New York and other states of the United States by way of rebate or allowance, something of value and furnished to the competitors of the plaintiff service and facilities connected with the sale, offering for sale and

servicing after sale of such goods and merchandise so purchased by the plaintiff upon terms not accorded to this plaintiff and that the defendant Chrysler Motors Corporation further discriminated against the plaintiff in the sale of such goods and merchandise in allowing discounts, rebates and allowances or advertising service charges to various competitors of this plaintiff located in the State of New York and above any such discount or allowance given to the plaintiff herein.

TWENTY-FIFTH: That the defendants Chrysler Motors Corporation, in having paid and Herbert S. Faris, Inc., Chrysler Manhattan Company, Inc., Chrysler Products East Side Service Center, Inc., and Mannion Dodge, Inc. in having received such rebate, allowances and/or subsidy have knowingly received a discrimination in price in violation of the statutes aforesaid.

DAMAGES

TWENTY-SIXTH: That as a result of such discrimination plaintiff has been damaged in the sum of \$250,000.00.

TWENTY-SEVENTH: That the plaintiff has been damaged in its business and property by reason of the unlawful conduct and actions of the defendants and that under the provisions of an ACT OF CONGRESS of the United States, approved October 15, 1914, 38 Statutes 731, (UNITED STATES CODE ANNOTATED, Title 15, Section 15) it is entitled to recovery of the defendant's threefold damages by it sustained and the costs of this suit including a reasonable attorneys fee.

PRAYER

WHEREFORE, plaintiff demands judgment against the defendants in the sum of \$750,000.00 together with the costs and disbursements of this action and a reasonable attorneys fee.

SHATZKEN & COOPER,

By Sh. I. Cooper
A Member of the Firm

Defendants.

3. Upon information and belief at all times hereinafter mentioned, defendant Edward J. Petrillo, Inc. was and still is a corporation organized under the laws

of the State of New York with a principal place of business in the State of New York.

4. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.

5. On or about January 25, 1963 plaintiff and defendant Urban Investing Corporation entered into an agreement whereby said defendant leased for a period of twenty years certain premises to plaintiff (hereinafter referred to as "the demised premises") described in said agreement as follows:

"ALL that parcel of land in the City of Yonkers, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the northwesterly side of Central Park Avenue where the same is intersected by the southwesterly line of a parcel of land 50 feet wide shown on map filed in the office of the County Clerk, Division of Land Records, formerly Register's Office of Westchester County, New York, as Map No. 1854 used and occupied as a right of way by the City of New York for access to the Catskill Aqueduct;

thence running (1) along the northwesterly side of Central Park Avenue in a southwesterly direction on a curve to the right having a radius of 5537.10 feet a distance of 169.93 feet to a point;

thence (2) North $57^{\circ} 44' 55''$ West 259.44 feet to a point;

thence (3) North $35^{\circ} 08' 06''$ East 184.65 feet;

thence (4) North $78^{\circ} 25' 20''$ East 176.69 feet to land of the City of New York;

thence (5) along the same South $11^{\circ} 34' 40''$ East 190.03 feet to the point of beginning.

6. In addition, defendant Urban Investing Corporation granted to plaintiff a certain right of way, among others, (hereinafter referred to as the "southerly right of way") to and from the demised premises for passage by foot and vehicle over and across the following described premises:

"ALL that parcel of land in the City of Yonkers, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the northwesterly side of Central Park Avenue distant as measured along the same 169.93 feet southwesterly from the southwesterly line of a parcel of land 50 feet wide shown on Map filed in the Office of the County Clerk, Division of Land Records, formerly Register's Office of Westchester County, New York, as Map No. 1864 used and occupied as a right of way by the City of New York for access to the Catskill Aqueduct;

thence running (1) along the northwesterly side of Central Park in a southwesterly direction on a curve to the right having a radius of 5537.10 feet a distance of 30.07 feet;

thence (2) North 57° 44' 55" West 258.83 feet;

thence (3) North 35° 08' 06" East 30.04 feet;

thence (4) South 57° 44' 55" East 259.44 feet to the point of beginning.

7. By the terms and conditions of the said agreement plaintiff and defendant Urban Investing Corporation mutually agreed that plaintiff could peaceably and quietly enjoy the demised premises.

8. When the said agreement was entered into it was known to defendant Urban Investing Corporation that

plaintiff intended to construct or cause to be constructed on the demised premises an automobile dealership and that the said southerly right of way would be used as a means of access and egress to the dealership to be constructed.

9. At all times hereinafter mentioned, upon information and belief defendant Urban Investing Corporation was the owner in fee of certain premises located on the northerly and westerly boundaries of the demised premises and southerly right of way and adjacent thereto and was engaged, through its officers, agents, servants, employees and contractors in certain work, construction and activities thereon.

10. In the course of said work, construction and activities at or about the period between May 1 and October 1, 1953, defendant Urban Investing Corporation and its officers, agents, servants, employees and contractors negligently, wrongfully, carelessly, recklessly, willfully, deliberately and with knowledge of the dangers and hazards that would be caused thereby, changed the elevation and grade of parts of the demised premises and southerly right of way and carried, transferred, moved, pushed and transported vast quantities of earth, rock, mud, topsoil, vegetation, dirt, fill, debris and other matter onto the demised premises and southerly right of way without the consent, permission, or authority of plaintiff and over the objection and warning of plaintiff that interfered with and prevented the construction of the aforementioned automobile dealership and

interfered with plaintiff's use and enjoyment of the demised premises and southerly right of way in violation of the terms of the said lease.

11. Defendant Urban Investing Corporation refused to remove the said earth, rock, mud, topsoil, vegetation, dirt, fill and debris from the demised premises and southerly right of way although repeatedly requested to do so by plaintiff and plaintiff was compelled to remove such materials therefrom at a cost to it of \$34,837.20, no part of which has been paid by said defendant.

AS AND FOR A
SECOND CLAIM

12. Plaintiff repeats and re-alleges the allegations contained in paragraphs "1" through "11" inclusive as if the same were set forth at length herein.

13. Upon information and belief at all times hereinafter mentioned, defendant Edward J. Petrillo, Inc. was a contractor engaged in certain work, construction, and activity on the premises adjacent to the demised premises and right of way with or for defendant Urban Investing Corporation.

14. At the times and places heretofore stated defendant Edward J. Petrillo, Inc. through its officers, agents, employees and servants acting for itself or for defendant Urban Investing Corporation negligently, wrongfully, carelessly, recklessly, willfully, deliberately and

with knowledge of the dangers and hazards that would be caused thereby, changed the elevation and grade of parts of the demised premises and right of way and carried, transferred, moved, pushed and transported vast quantities of earth, rock, mud, topsoil, vegetation, dirt, fill, debris and other matter onto the demised premises and southerly right of way without the consent, permission, or authority of plaintiff and over the objection and warning of plaintiff that interfered with and prevented the construction of the aforementioned automobile dealership and interfered with plaintiff's use and enjoyment of the demised premises and southerly right of way.

15. The aforementioned conduct of defendant Edward J. Petrillo, Inc. or defendant Urban Investing Corporation, or both of them and their officers, agents, servants, employees and contractors constituted a nuisance.

AS AND FOR A
THIRD CLAIM

16. Plaintiff repeats and re-alleges the allegations contained in paragraphs "1" through "11", "13" and "14" inclusive as if the same were set forth at length herein.

17. The aforementioned conduct of defendant Edward J. Petrillo, Inc. or defendant Urban Investing Corporation, or both of them and their officers, agents, servants, employees and contractors constituted a trespass.

364 a.

AS AND FOR A
FOURTH CLAIM

18. Plaintiff repeats and re-alleges the allegations contained in paragraphs "1" through "11", "13" and "14" inclusive as if the same were set forth at length herein.

19. The aforementioned acts of defendant Edward Inc. J. Petrillo/or defendant Urban Investing Corporation, or both of them, and their officers, agents, servants, employees and contractors were performed carelessly, wantonly, recklessly and negligently.

AS AND FOR A
FIFTH CLAIM

20. Plaintiff repeats and re-alleges the allegations contained in paragraphs "1" through "5", "7" and "8" as if the same were set forth at length herein.

21. By the terms of the said agreement it was provided:

"24. LANDLORD'S UTILITY EASEMENT. The following portion of the demised premises is hereinafter described in this Article 24, and in Article 25 hereof, as the 'Northerly Area':

"ALL that parcel of land in the City of Yonkers, County of Westchester and State of New York, bounded and described as follows:

"BEGINNING at a point on the northwesterly side of Central Park Avenue where the same is intersected by the southwesterly line of a parcel of land 50 feet wide shown on map filed in the Office of the County Clerk, Division of Land Records, formerly Register's Office of Westchester County, New York, as Map No. 1854 used and occupied as a right of way by the City

of New York for access to the Catskill Aqueduct;;

"thence running along the northwesterly side of Central Park Avenue in a southwesterly direction of a curve to the right having a radius of 5537.10 feet a distance of 41.59 feet;

"thence North $11^{\circ} 34' 40''$ West 218.83 feet;

"thence North $78^{\circ} 25' 20''$ East 30.00 feet to the land of the City of New York;

"thence along the same, South $11^{\circ} 34' 40''$ East 190.03 feet to the point of beginning.

"(which premises are hereinafter called the 'Northerly Area').

"Landlord may use the Northerly Area for the installation, maintenance and repair of utility lines serving the Heights Lands, as the term Heights Lands is defined in Article 5 hereof, but Landlord may not use the Northerly Area for any other purpose. All of said utility lines shall be installed at the sole cost and expense of Landlord and all of said lines shall be placed below ground, except for necessary manholes which will be level with the ground. Tenant agrees not to erect any buildings within the Northerly Area during the term of this Lease, but Tenant may pave the Northerly Area and use the same for all purposes permitted under Article 2 hereof (OCCUPANCY). Landlord shall give Tenant at least thirty (30) days' advance written notice of its intention to do any work within the Northerly Area, except in an emergency when Landlord shall give as much advance notice as is reasonably possible; Landlord shall thereafter diligently complete such work so as to interfere with Tenant's use of the Northerly Area for as short a time as reasonably possible; and upon completion of such work Landlord shall restore and repave the surface of the ground to its former condition. In no event shall Tenant be deprived of the use of the Northerly Area for a period in excess of thirty (30) days, and after the initial installation of utility lines Landlord shall thereafter enter the Northerly Area only for necessary maintenance and repair work."

22. Defendant Urban Investing Corporation and its officers, agents, servants, employees and contractors

maintained an open trench upon the said Northerly Area described in said Article 24 for a period in excess of thirty days as permitted therein that interfered with and prevented the construction of the automobile dealership to be constructed on the demised premises and interfered with plaintiff's use and enjoyment thereof.

23. Defendant Urban Investing Corporation refused to close the said trench upon the repeated requests of plaintiff and plaintiff was compelled to do so at a cost to it of \$687.74, no part of which has been paid by said defendant.

AS AND FOR A
SIXTH CLAIM

24. Plaintiff repeats and re-alleges the allegations contained in paragraphs "1" through "5", "7", "8", "20" and "21" inclusive as if the same were set forth at length herein.

25. The conduct of the defendant Urban Investing Corporation in maintaining said open trench for more than thirty days constituted a nuisance.

WHEREFORE plaintiff demands judgment:

1. Against defendant Urban Investing Corporation the sums of \$34,837.20 compensatory damages and \$150,000 exemplary and punitive damages on the First Claim.

2. Against both defendants the sum of \$34,837.20 compensatory damages and \$150,000 exemplary and punitive

damages on the Second, Third and Fourth Claims.

3. Against defendant Urban Investing Corporation
the sum of \$687.74 on the Fifth and Sixth Claims.

4. Such other and further relief which to the
Court may seem just and proper.

KELLEY DRYE NEWHALL MAGINNES & WARREN
Attorneys for Plaintiff
350 Park Avenue
New York 22, New York

By _____
[Signature]

DISTRICT COURT OF THE COUNTY OF NASSAU
THIRD DISTRICT : GREAT NECK

-----X
CHRYSLER MOTORS CORPORATION,

Plaintiff,

-against-

R. G. R. ASSOCIATES, a Partnership,
and WILLIAM D. RECHLER, WALTER J.
GROSS and HOWARD ROSE,

Defendants.
-----X

COMPLAINT

1. Plaintiff is a corporation incorporated in the State of Delaware and authorized to do business in the State of New York.
2. Upon information and belief, defendant R. G. R. Associates is a partnership formed under the laws of New York and doing business and conducted by two or more persons.
3. Upon information and belief, defendants William Rechler, Walter Gross and Howard Rose are partners in and conducting the business of defendant R. G. R. Associates.
4. That on or about the 15th day of March, 1963, plaintiff and defendants entered into a written agreement, entitled "Lease Agreement", wherein plaintiff leased from defendant, for valuable consideration, certain premises and buildings located at 1170 Northern Boulevard, Manhasset, New York. Said agreement was in force and effect at all times mentioned in this complaint.

5. That among other things defendants agreed, promised and covenanted in said agreement that they would keep the premises and buildings in good order and condition and make all:

"exterior and structural repairs, repairs to the roof, and such other repairs as may be necessary by reason of ordinary wear and tear, damage by fire, the elements or other casualty..."

Defendant further agreed, promised and covenanted in said agreement to maintain and make repairs and replace all wall and other portions of said premises and buildings and put the same in good working order.

6. That thereafter, through no fault of plaintiff, it was found that certain structural, exterior, roof, wall and other portions of the building and premises were in serious disrepair, were not in good working order but dangerous and unsafe, and necessitated repairs.

7. That plaintiff demanded of defendants in writing that they make the necessary repairs but notwithstanding said demand and defendants' promises and covenants they wholly refused to do so.

8. As a result of defendants' refusal and breach of their promises and covenants, plaintiff has expended the sum of \$2,658.00 for repairs of the said premises and buildings.

WHEREFORE, plaintiff demands judgment in the sum of \$2,658.00 plus interest and the costs and disbursements of this action.

KELLEY DRYE NEWHALL MAGINNES & WARREN
Attorneys for Plaintiff
350 Park Avenue
New York, New York 10022

SUPREME COURT OF THE STATE OF
NEW YORK : COUNTY OF SUFFOLK

BABYLON CHRYSLER-PLYMOUTH, INC.,

Plaintiff,

-against-

VERIFIED COMPLAINT

CHRYSLER MOTORS CORPORATION, and
CHRYSLER REALTY CORPORATION,

Defendants.

The plaintiff, by its attorneys, HALPERIN, SOMERS & GOLDSTICK, P. C., for its verified complaint, respectfully alleges that:

1. At all the times hereinafter mentioned, plaintiff was and still is a New York corporation, engaged in the retail sale and servicing of new and used automobiles, and is an authorized CHRYSLER-PLYMOUTH-IMPERIAL new car dealer pursuant to Dealership Agreements between the plaintiff and the defendant CHRYSLER MOTORS CORPORATION.

2. At all the times hereinafter mentioned, defendant CHRYSLER MOTORS CORPORATION (hereinafter referred to as "CHRYSLER MOTORS") was and still is a foreign corporation, organized and existing under the laws of the State of Delaware, and doing business in the State of New York, having a Regional Office at 99 Church Street, White Plains, Westchester County, New York, and is engaged, inter alia, in the manufacture and sale of automobiles

through its franchised dealers, including the plaintiff.

3. Upon information and belief, the defendant CHRYSLER REALTY CORPORATION (hereinafter referred to as "CHRYSLER REALTY") is a foreign corporation, organized and existing under the laws of the State of Delaware, and is a wholly-owned subsidiary of the defendant CHRYSLER MOTORS, and maintains a New York office at 99 Church Street, White Plains, Westchester County, New York.

4. In July 1965, the plaintiff was an authorized CHRYSLER-PLYMOUTH-IMPERIAL Dealer engaged in the retail sale and servicing of automobiles from its then existing leased premises at 233 East Main Street, Babylon, Suffolk County, New York, under a lease agreement for said premises, having four years to run at a gross rental of \$1,350 per month.

5. In July 1965, the defendant CHRYSLER MOTORS proposed to the plaintiff the advantages of a new real estate program initiated and designed by CHRYSLER MOTORS for the purpose of assisting its dealers to upgrade and improve the dealer's retail facilities and location in order to increase sales of CHRYSLER products. At that time representatives of the defendant CHRYSLER MOTORS visited the plaintiff's then showroom facilities and represented that if the plaintiff was willing to relocate its dealership to new and more suitably located facilities, the defendant CHRYSLER MOTORS would purchase or lease land in a better location and build brand new facilities for the express use and occupancy by the plaintiff as an authorized CHRYSLER dealer in which the base monthly rent would be computed on the basis of a fixed return to CHRYSLER of 5 per cent of its total investment amortized over 25 years and, more particularly, at a constant annual rental of 7.02 per cent per annum for the 25 years of CHRYSLER's total investment in the land, building and facilities.

6. At the time of the aforesaid proposal by the defendant CHRYSLER MOTORS, the plaintiff was operating at a substantial rate of profit and was bound by a lease having four years remaining at a constant monthly gross rental of \$1,350 per month, and would not have considered relocating from its then facilities except for the fact that it was specifically represented and warranted by the defendant CHRYSLER MOTORS that if relocation was agreed to, the rent for the new facilities would remain constant for 25 years at the formula of 7.02 per cent of CHRYSLER MOTORS' total investment. The plaintiff was induced into relocating into a new location and facilities to be owned by the defendant CHRYSLER MOTORS and leased to the plaintiff at a much higher proposed monthly rental on the basis of such representations that the rent would be constant for the next 25 years.

7. Subsequently, between July 1965 and October 1, 1965, the defendant CHRYSLER MOTORS, by its authorized representatives, revealed to the plaintiff a then proposed site for a new dealership facility located on the South side of Montauk Highway, between Bergen Avenue and Muncie Street (now known as 650 Montauk Highway), West Babylon, New York which defendant CHRYSLER MOTORS indicated that it was prepared to purchase and build new facilities thereon for the express use and occupancy of the plaintiff over a 25-year period at a net net rental factor of 7.02 per cent of the defendant CHRYSLER MOTORS' total investment in the land and facilities, provided that the plaintiff execute a formal Dealer Relocation Agreement binding the plaintiff to relocate to the new facilities upon completion thereof.

8. On or about October 18, 1965, the plaintiff and the defendant CHRYSLER MOTORS did enter into a Dealer Relocation Agreement, a copy of which is annexed hereto and marked Exhibit "A".

which incorporated into written agreement the representations and proposals of the defendant CHRYSLER MOTORS, verbally made through its representatives and employees, that the plaintiff would lease from CHRYSLER MOTORS CORPORATION the aforesaid land and facilities for the operation of its CHRYSLER-PLYMOUTH-IMPERIAL automobile dealership upon completion of such facilities at a base rent over a 25-year period computed at a 5 per cent return upon the total investment of CHRYSLER MOTORS in said land and facilities at a factor of 7.02 per cent per year of the defendant CHRYSLER MOTORS' total investment.

9. The plaintiff, when it executed and entered into the aforesaid Dealer Relocation Agreement on October 18, 1965 (Exh. A) relied upon the representations, statements and promises of the representatives and employees of the defendant CHRYSLER MOTORS that plaintiff would have the benefit of a fixed base net rental over the 25-year period using the 7.02 per cent formula, from which there would be no deviation.

10. Thereafter, the defendant CHRYSLER MOTORS, pursuant to the Dealer Relocation Agreement of October 18, 1965 (Exh. A), did acquire title to the Subject Premises at West Babylon, Town of Babylon, Suffolk County, New York, more particularly bounded and described as follows:

BEGINNING at a point on the southerly side of Montauk Highway, said point being 150.01 feet westerly measured from the corner formed by the intersection of the said southerly side of Montauk Highway with the westerly side of Bergen Avenue; running thence S. 16° 22' 35" E., 544.08 feet to the land now or formerly of Bulk; running thence S. 62° 20' 40" W. along said land now or formerly of Bulk, 88.90 feet; running thence S. 81° 15' 30" W., still along said land now or formerly of Bulk, 121.10 feet to a point; running thence N. 16° 52' 40" W. along the land now or formerly of Fifer, Brewer and Meredith and Springer, 364.09 feet to land now or formerly of Schwartzberg; running thence N. 66° 43' 40" E. along said land formerly of Schwartzberg, 0.19 feet; running thence N. 15° 37' 50" W. still along said land formerly of Schwartzberg, and land now or formerly of Tremasco Corp., 214.22 feet to the said southerly side of Montauk Highway; running thence N. 82° 38' 30" E. along said southerly side of Montauk Highway, 210.00 feet to the point or place of beginning.

11. Thereafter, in 1966 through May 1967, the defendant CHRYSLER MOTORS did erect and cause to be erected upon the Subject Premises a building and facilities required for the operation of plaintiff's CHRYSLER-PLYMOUTH-IMPERIAL automobile dealership pursuant to the Dealer Relocation Agreement (Exh. A).

12. In or about May 1967, as the new facilities were nearing completion, the defendant CHRYSLER MOTORS did submit to the plaintiff a proposed Lease Agreement which left blank the length of the term of the lease and the amount of the rent but which was otherwise satisfactory to plaintiff as to form. Thereafter, in May 1967, the defendant CHRYSLER MOTORS advised the plaintiff that the base monthly rental would be \$3,210.00 per month, based upon the formula contained in the Dealer Relocation Agreement (Exh. A) and that the initial term of the lease would be for a 5-year period.

13. Plaintiff, upon receiving the information as to the amount of rent and the term of the lease objected that the amount of the net monthly rent was in excess of the oral representations made by the defendant CHRYSLER MOTORS through its representatives and employees as to the overall cost and investment in the project and did further object to the term of five years. Subsequently, in May 1967, meetings were held between representatives of the plaintiff and representatives of the defendant CHRYSLER MOTORS at which the then Regional Manager of CHRYSLER MOTORS stated that it was the policy of CHRYSLER MOTORS to enter into 5-year Lease Agreements under the Dealer Relocation Agreement which would be renewed each five years for a 25-year term at the same base

monthly rental provided, inter alia, that the plaintiff continued to be an authorized direct dealer of CHRYSLER MOTORS. Representatives of CHRYSLER MOTORS further stated that in view of the fact that the base net rental was to be fixed for 25 years, it was unfair of plaintiff to complain of the amount of such rental even though the new rental was more than 2-1/2 times the rental which the plaintiff had been paying for its then facilities at 233 East Main Street, Babylon, New York.

14. The plaintiff relied upon the representations and statements made by the representatives of CHRYSLER MOTORS and on May 10, 1967 did enter into a Lease Agreement for the Subject Premises with the defendant CHRYSLER MOTORS, a copy of which is annexed hereto and marked Exhibit "B".

15. The Lease Agreement (Exh. B) by its terms presently expires on July 31, 1972, although it was understood that said Lease would be renewed at 5-year intervals with the same terms for 20 years after the expiration date, in accordance with the provisions of the Dealer Relocation Agreement (Exh. A).

16. Upon information and belief, after August 1967, the date of commencement of the Lease Agreement, the defendant CHRYSLER MOTORS did transfer and convey title to the Subject Premises to its wholly-owned subsidiary, the defendant CHRYSLER REALTY, which latter corporation became the owner of the fee to the Subject Premises with full knowledge of the agreements and understandings, both written and verbal, between the plaintiff and the defendant CHRYSLER MOTORS.

17. In or about March 1972, the plaintiff did receive from the defendants a proposed renewal lease agreement to take effect upon expiration of the initial five-year Lease Agreement (Exh. B) and to commence August 1, 1972, and end July 31, 1977, but which proposed renewal lease agreement is at an increased monthly base net rental for the Subject Premises of \$3,884 per month in place of the present \$3,210 per month. In addition, the proposed renewal lease contains terms and provisions not set forth in the original 5-year lease (Exh. B) and not contemplated by either the plaintiff or the defendant CHRYSLER MOTORS at the time of the making of the Dealer Relocation Agreement (Exh. A) or the initial Lease Agreement (Exh. B). Annexed hereto and made a part hereof and marked Exhibit "C" is a copy of the proposed renewal lease agreement, together with a copy of the transmittal letter from the defendants to the plaintiff.

18. Plaintiff asserts and claims that, by reason of the provisions of the Dealer Relocation Agreement (Exh. A) and the verbal understandings between the plaintiff and the defendant CHRYSLER MOTORS, and the express statements and representations made by the defendant CHRYSLER MOTORS to the plaintiff upon which plaintiff relied when it did execute the said Dealer Relocation Agreement (Exh. A) and the initial Lease Agreement (Exh. B), the plaintiff has a right to receive a renewal lease agreement upon the exact same terms, provisions and at the same base monthly rental for the next twenty years commencing August 1, 1972, as are contained in the initial 5-year Lease Agreement (Exh. B) presently in effect and expiring July 31, 1972.

19. Upon information and belief, the defendants and both of them dispute plaintiff's right to pay rental under a renewal lease at the same rental contained in the initial 5-year

Lease (Exh. B) and upon the same terms thereof and dispute the claim of plaintiff that defendants are bound by the provisions of the Dealer Relocation Agreement (Exh. A).

20. Because of such doubts and disputes with reference to plaintiff's right to obtain a renewal Lease Agreement at the same rental and under the same terms and conditions as contained in the present Lease Agreement (Exh. B), a judicial determination of such doubts and disputes is desirable and necessary in order that plaintiff's right to obtain a renewal lease agreement at the same base monthly rental and on the same terms and provisions may be determined and adjudged between plaintiff and defendants without plaintiff incurring the danger of losing its property rights as a tenant of the Subject Premises by warrant in summary proceedings by reason of the expiration of the present Lease on July 31, 1972, or for non-payment of the asserted increased base monthly rental as sought by the defendants, or otherwise.

WHEREFORE, plaintiff requests the judgment of this Court as follows:

(a) That a declaration be made that the computation of the base rent for the Subject Premises as set forth in the Dealer Relocation Agreement (Exh. A) at 7.02 per cent of the total investment of the defendant CHRYSLER MOTORS, amortized over a period of 25 years, and coupled with the verbal representations and statements be deemed to be binding upon the defendants and to constitute the fixed base rent for the Subject Premises for the next 20 years after expiration of the present Lease Agreement on July 31, 1972.

(b) That a declaration be made that the plaintiff be entitled to receive a renewal lease upon the exact same terms and provisions and at the same base rent as contained in the initial Lease (Exh. B), albeit for the next 20 years, as contemplated in the Dealer Relocation Agreement (Exh. A) and pursuant to the verbal representations and statements of the defendants to the plaintiff and upon which the plaintiff relied.

(c) That a declaration be made that the judgment to be rendered herein shall be binding upon the parties hereto and upon the successors and assigns of the defendants, without reservation, and upon the successor and assigns of the plaintiff, except as such rights may be modified in the present Lease Agreement (Exh. B).

(d) That pending the hearing and determination of this action the defendants and each of them be enjoined and restrained from collecting from the plaintiff any increased base monthly rental in excess of \$3,210 per month for the Subject Premises and from interfering with plaintiff's use and occupancy of the Subject Premises after expiration of the present Lease on July 31, 1972.

(e) That this Court grant such other and further declaration and relief concerning the rights and legal relations of the parties in this action as shall be necessary and proper to accomplish justice in the premises.

(f) That the plaintiff be awarded the costs and disbursements of this action against the defendants.

HALPERIN, SOMERS & GOLDSTICK, P.C.
Attorneys for Plaintiff
Office & P. O. Address
551 Fifth Avenue
New York, New York 10017

Tel. No. (212) 682 0700

CHRYSLER MOTORS CORPORATION, a Delaware Corporation (hereinafter called "Chrysler"),

Leo Schirmerling, Andrew Spicuglia (hereinafter called the "Individual(s)"),

and Babylon Chrysler-Plymouth, Inc. (hereinafter called the "Dealership")

desire to establish the terms and conditions under which the Individual(s) and/or Dealership will dis-
continue its present operations at 233 East Main St. Babylon, New York

as a Chrysler-Plymouth-Imperial dealer, and the

Individual(s) and/or Dealership or a dealer corporation under Individual(s) management will locate in
facilities to be built by Chrysler and operate as a Chrysler-Plymouth-Imperial

dealer from such facilities subject to the terms of this agreement.

NOW, THEREFORE, on this 18th day of October, 1965, in considera-
tion of the above premises and the mutual promises hereinafter set forth, the parties hereto agree as
follows:

1. Chrysler will lease or purchase land located at South side of Montauk, betw-
Bergen Avenue and Muncie Street, West Babylon, New York

and will construct upon such land a building or buildings required for the operation of a Chrysler-
Plymouth-Imperial

retail automobile dealership
facility (which land, buildings, etc., are hereinafter called the "Facilities"), provided the neces-
sary building and use permits may be obtained from appropriate municipal or governmental authori-
ties. The Facilities to be built upon such land shall be in accordance with Chrysler's design and
specifications.

2. Upon completion of the Facilities, Chrysler will notify Individual(s) and/or Dealership that
the Facilities are ready for occupancy, and upon such notice by Chrysler:

A. The Chrysler-Plymouth-Imperial Agreement currently in effect
between Chrysler and Individual(s) and/or Dealership shall terminate automatically and with-
out further notice from either party and Individual(s) and/or Dealership shall discontinue
all operations relating to the sale and service of Chrysler-Plymouth-Imperial
vehicles from its present location at 233 East Main Street, Babylon, N.Y.

In connection with Individual(s) and/or Dealership's discontinuance of operations at its present location described above, Individual(s) and/or Dealership shall and without financial assistance from Chrysler, assume all costs incurred in the termination or other disposition of its lease obligations at its present location, including all costs incurred in the relocation of operations to the Facilities.

B. Upon termination of Individual(s) and/or Dealership's existing Chrysler-Plymouth-Imperial Agreement as provided in "A" above, Chrysler and Individual(s) and/or Dealership (or a dealer corporation under Individual(s) management) will enter into a Chrysler-Plymouth-Imperial Agreement with respect to operations at the Facilities.

C. Upon Individual(s) and/or Dealership entering into a Chrysler-Plymouth-Imperial Agreement as provided in "B" above, Chrysler and Individual(s) and/or Dealership (or a dealer corporation under Individual's management) will enter into a Lease Agreement for the Facilities, which Lease Agreement shall be in the form attached marked Exhibit "A". In the event Chrysler acquires through lease the land upon which the Facilities are to be erected, the base rent, exclusive of taxes and insurance, payable by Individual(s) and/or Dealership to Chrysler for the Facilities shall be determined by Chrysler based upon the rental obligation imposed upon Chrysler in the Ground Lease covering the property on which the Facility will be constructed, plus an amount equal to a five per cent (5%) return upon Chrysler's total investment in the improvements placed upon the property, amortized over a twenty-five (25) year period, which is equal to a factor of 7.02 per cent per year of Chrysler's total investment.

In the event Chrysler purchases the land upon which the Facilities are to be erected, the base rent shall be determined by Chrysler based upon a five per cent (5%) return upon Chrysler's total investment in the Facilities, amortized over a twenty-five (25) year period, which is equal to a factor of 7.02 per cent per year of Chrysler's total investment.

The parties hereto recognize that Chrysler has not as yet received Investment Committee approval for the acquisition of the land on which the Facilities will be constructed. In the event the Investment Committee approval is not obtained, or if the necessary building and use permits are not obtained from the proper municipal authorities as outlined in paragraph #1 of this Agreement, or if Chrysler's acquisition of the property is not finalized for any reason whatsoever, then this Agreement shall be null and void and of no further force and effect.

D. If for any reason Individual(s) and/or Dealership fails to enter into the Chrysler-Plymouth-Imperial Agreement and Lease Agreement as provided in paragraph "B" and "C" above, within 30 days after Chrysler notifies Individual(s) and/or Dealership that the Facilities are ready for occupancy, Chrysler shall have no obligation to lease the Facilities to Individual(s) and/or Dealership and Chrysler shall have no obligation to enter into the Chrysler-Plymouth-Imperial Agreements with Individual(s) and/or Dealership, but in such event the termination of Individual(s) and/or Dealership's existing Chrysler-Plymouth-Imperial Agreement as provided in paragraph "A" above shall be and remain effective.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

WITNESS:

CHRYSLER MOTORS CORPORATION

BY:

ITS Vice-President

WITNESS:

Babylon Chrysler-Plymouth, Inc.
(Dealership)

BY:

Leo Schimmerling

ITS

President

WITNESS:

James H. Thompson
Chrysler Motors Corp.

Andrew Spicuglia, Vice President

(Individual)

(Individual)

(Individual)

382 a
Lease Agreement

PARTIES

THIS LEASE, made this 10th day of MAY, 1967, between CHRYSLER
MOTORS CORPORATION, a Delaware corporation, having an office at 7000 East Eleven Mile Road,
Detroit, Michigan 48231 hereinafter designated "Landlord", and BABYLON
650 MONTAUK HIGHWAY CHRYSLER-PLYMOUTH, INC.
whose address is BABYLON, NEW YORK, hereinafter designated "Tenant",

WITNESSETH:

Landlord, in consideration of the premises and of the rents hereinafter reserved and of the covenants,
agreements and conditions herein contained to be kept and performed on the part of Tenant, does here-
by rent unto Tenant, and Tenant does hereby hire and take, the parcel or parcels of land with the
buildings and improvements now or hereafter erected thereon, situated and being in the COUNTY OF
SUFFOLK, State of NEW YORK,

described as follows:

EXHIBITS "A" & "B" ATTACHED HERETO AND MADE A PART HEREOF

THE DEMISED
PREMISES

The above described property, and all buildings and building equipment, structures, improvements,
machinery, equipment and fixtures, pavement, walks, fences, shrubbery and signs now or hereafter
located on the above described property, (including, but not limited to, the items listed on the attached
Schedule "A") except furniture and trade fixtures and other property belonging to Tenant, are herein
collectively referred to as "the demised premises" and are to be used for motor vehicle sales and
service operations only.

TERM

TO HAVE AND TO HOLD the demised premises, unto Tenant upon and subject to all the terms, coven-
ants and conditions herein contained, for a term beginning on the 1st day of AUGUST,
1967 and ending on the 31st day of JULY, 1972 or until sooner termi-
nated as hereinafter provided.

And Tenant does covenant and agree to and with Landlord as follows:

RENT

1. Tenant shall pay to Landlord at Landlord's office address above set forth or at such other place as Landlord may from time to time designate in writing, rent for the said term in the total amount of \$ 192,600.00, which said rent shall be paid in monthly installments as follows:

THREE THOUSAND TWO HUNDRED TEN (\$3,210.00) DOLLARS TO BE

PAID IN ADVANCE ON THE FIRST BUSINESS DAY OF EACH MONTH

DURING THE TERM HEREOF

in lawful money of the United States. Tenant agrees to pay the said rent in the manner aforesaid and such other sums as are hereinafter provided to be paid as additional rent and any and all other sums and charges hereinafter specified by separate payment and without setoff or deduction whatsoever.

TAXES AND ASSESSMENTS

2. All matters pertaining to the assessment and taxation of Tenant's personal property shall be Tenant's responsibility. All matters pertaining to the assessment for ad valorem tax purposes of the land, buildings and Landlord's personal property included in the demised premises shall be the sole responsibility of Landlord. Tenant shall pay to Landlord monthly in addition to the rental hereinabove stipulated, the sum of FIVE HUNDRED Dollars (\$ 500.00), which is an estimate of the monthly cost of the real and personal property taxes on the demised premises. Landlord will pay such taxes when the same, or any installment thereof, shall become due and payable. Landlord may make adjustments in the amount of the monthly payment required in this Paragraph 2 from time to time during the term of this lease, if necessary, in order to reflect any changes in the amount of taxes on the demised premises. Landlord shall give Tenant notice of any such adjustment at least 30 days prior to its effective date. For the purposes of this Paragraph 2, taxes are to be prorated on an annual basis prospectively from the earliest date the first installment of an annual tax becomes due and payable. If the tax is for other than an annual period, the proration shall be based upon the period covered. The sum hereinabove in this paragraph provided for shall be used only for the payment of taxes and any excess on termination of this lease shall be refunded to Tenant.

Tenant shall also pay to Landlord on a monthly basis following notice from Landlord to Tenant of any special assessment levied, assessed, or imposed on the demised premises during the term of this lease, a sum equal to 1/12 of the total amount of any such special assessment multiplied by .0792. Such notice shall specify the amount of the monthly payment required hereunder.

The payments provided to be made by Tenant in this Paragraph 2, shall be made on the first day of each calendar month during the term and shall be, for all purposes hereunder, additional rent and for

the nonpayment thereof Landlord shall have the same rights and remedies as are provided in this lease in the case of nonpayment of the monthly rent.

TERMINATION

3. Without limiting the rights or powers of cancellation of this lease as provided elsewhere herein, this lease may be cancelled at any time during the term (or any extension or renewal thereof) on the following basis:

a. This lease shall be null and void at the option of Landlord if:

(1) Tenant ceases to be an authorized Direct Dealer for Landlord's Products (at the demised premises) as a result of termination of any Direct Dealer Agreement at any time entered into between Tenant and Landlord, or any subsidiary of Landlord, when such termination results from either:

- (a) Notice of termination by Tenant,
- (b) Notice of termination by Landlord, or a subsidiary of Landlord,
- (c) Mutual agreement between Tenant and Landlord, or a subsidiary of Landlord.

Landlord shall notify Tenant in writing of its election to treat this lease null and void hereunder. Thereupon, cancellation of this lease will be effective on the last day of the month in which such notice is mailed, at which time this lease shall terminate as though said date were originally fixed for the termination and expiration of this lease.

b. This lease shall be null and void without notice to either party, on the effective date provided hereinafter, if any Direct Dealer Agreement with Tenant for Landlord's Products (at the demised premises) shall terminate, expire or be cancelled for any reason not provided for in subdivisions (a), (b) or (c) of Paragraph 3. a. (1) of this lease, unless Tenant and Landlord, or a subsidiary of Landlord, enter into a superseding Direct Dealer Agreement for Landlord's Products at the demised premises. Cancellation of this lease hereunder shall be effective on the last day of the month in which any such termination of Tenant's Direct Dealer Agreement for Landlord's Products becomes effective, at which time this lease shall terminate as though said date were originally fixed herein for the termination and expiration of this lease.

UTILITIES

4. Tenant shall use the demised premises and each and every part thereof and the facilities, machinery and equipment therein contained at its own cost and expense, and shall pay or cause to be paid all charges for gas, electricity, light, heat, power, telephone and other service used, rendered or supplied upon or in connection with the demised premises and each and every part thereof.

**REPAIRS AND
MAINTENANCE**

5. Except as specifically provided in Paragraph 18 herein, Tenant covenants and agrees that it will at its own expense, during the continuance of this lease, keep the demised premises, including plate glass, in good order and repair, and Tenant shall promptly make any and all repairs or replacements necessary for that purpose, whether or not any of such repairs or replacements shall be interior or exterior, extraordinary as well as ordinary, and whether or not such repairs or replacements shall be of structural nature, and whether or not the same can be said to be within the present contemplation of the parties hereto; and Landlord may have access to the demised premises at reasonable times for the purpose of inspecting the same, but such right of access shall not be construed as obliging Landlord to make any of said repairs to, or replacement of, any part of the demised premises or as obliging Landlord to make any such inspection. Where an inspection reveals repairs or replacements are necessary, Landlord shall give Tenant notice in writing, and thereupon Tenant will, within 60 days after said notice, make such repairs in a good and workmanlike manner. In the event Tenant does not make the said repairs or replacements within 60 days after notice from Landlord, Landlord may thereupon terminate this lease or enter upon the premises and make the said repairs or replacements itself and charge the cost thereof to Tenant as additional rent hereunder. Tenant will, at all times during the term of this lease, keep the sidewalks adjoining the demised premises in good order and repair and free from snow, ice or any unlawful obstructions.

SURRENDER

6. Tenant shall and will on the last day of the term hereby granted or of any extension or renewal thereof, or sooner termination thereof, peaceably surrender and deliver up the demised premises into the possession of Landlord, its successors or assigns, in good order, condition and repair, damage by fire, explosion or the elements only excepted.

**CONDITION OF
PREMISES AT
TIME OF
LEASE**

7. Tenant further acknowledges that it has examined the demised premises prior to the making of this lease, and knows the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by Landlord or its agents, which are not herein expressed, and Tenant hereby accepts the demised premises in their present condition.

**LAWS,
ORDINANCES,
ETC.**

8. Tenant will at all times during the term of this lease, at its own cost and expense, perform and comply with all present or future laws, rules, orders, ordinances, and regulations of the United States of America, and of state, county or city governments, and any authority, department or bureau thereof, and of any other municipal, governmental or lawful authority having jurisdiction of the premises whatsoever, relating to, or in any manner affecting, the demised premises, the adjacent sidewalks or any buildings thereon or the use thereof.

**COVENANT
AGAINST
ASSIGNMENT,
SUBLETTING**

9. Tenant covenants not to assign or transfer this lease or hypothecate or mortgage the same or sublet the demised premises or any part thereof, and any such assignment, transfer, hypothecation, mortgage or subletting shall be void.

**NONUSE,
BANKRUPTCY,
INSOLVENCY,
ETC.**

10. Tenant agrees that in the event, without the written consent of Landlord, the demised premises shall become and remain vacant or not used for a period of ten days while the same are suitable for use by Tenant or in the event they shall be used by any person other than Tenant, or if the estate created hereby shall be taken in execution, or by other process of law, or if Tenant shall file a voluntary petition in bankruptcy, or be declared bankrupt or insolvent, according to law, or any receiver be appointed for the business and property of Tenant, or if any assignment shall be made of Tenant's property for the benefit of creditors, then, and in such event, this lease may be cancelled at the option of Landlord.

**ALTERATIONS,
ADDITIONS AND
IMPROVEMENTS**

11. Tenant shall not make any alterations, changes, additions or improvements to the demised premises without Landlord's written consent, and all alterations, changes, additions or improvements made by either of the parties hereto upon the demised premises, except movable office furniture and trade fixtures put in at the expense of Tenant, shall become the property of Landlord and shall remain upon and be surrendered with the demised premises upon the expiration of this lease, or any sooner termination thereof, except as Landlord may elect otherwise as hereinafter provided. If Landlord shall so elect, then such alterations, changes, additions or improvements made by Tenant upon the demised premises as Landlord shall select, shall be removed by Tenant and Tenant shall restore the demised premises to the original condition thereof at its own cost and expense within thirty days after notice from Landlord of such election, such notice to be given not later than ten days after the expiration of this lease or any sooner termination thereof. The movable furniture and trade fixtures of Tenant, however, shall remain Tenant's property at all times and shall be removed at the termination of this lease, any damage to the premises in the course of such removal to be repaired by Tenant at Tenant's own cost and expense.

**RIGHT TO
MORTGAGE**

12. This lease is and shall be subject and subordinate to all mortgages and ground or underlying leases which may now or hereafter affect the real property demised hereunder, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee. In confirmation of such subordination, Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments subordinating this lease to the lien of any such mortgage or mortgages as shall be

desired by Landlord and any mortgagees or proposed mortgagees and hereby irrevocably appoints Landlord the attorney-in-fact of Tenant to execute and deliver any such instrument or instruments for and in the name of Tenant. Tenant further covenants and agrees to execute upon demand such further instrument or instruments (including cancellation and re-execution of this lease as a sublease) necessary to create a sublease of the demised premises to Tenant upon the same terms and conditions as are provided herein in the event that Landlord effects a sale and lease back of the demised premises.

**PUBLIC
LIABILITY
INSURANCE**

13. Tenant, at its expense, shall provide and keep in force for the benefit of Landlord and Tenant, respectively, comprehensive general liability insurance in the minimum limits of liability with respect to bodily injury of \$250,000.00 for each person and \$500,000.00 for each occurrence and in respect to property damage \$50,000.00 for each accident. The insurance shall include contractual liability coverage specifically insuring the agreements made by Tenant in this Paragraph 13 and in Paragraph 14 following, shall cover the entire demised premises, including sidewalks, streets and ways adjoining the demised premises, shall be issued by insurance companies and in form satisfactory to Landlord, shall provide for at least ten days prior written notice to Landlord in the event of cancellation or any material change, and copies of such policy or policies shall be delivered to Landlord prior to the commencement of the term of this lease and thereafter no later than ten days prior to the expiration date of the policy then in force.

**DAMAGE TO
PERSON OR
PROPERTY,
INDEMNIFICATION**

14. Landlord shall not in any event be responsible, and Tenant hereby specifically assumes responsibility for any injury or death of any persons (including employees of Tenant and Landlord) and damage, destruction or loss of use of any property, including the demised premises (except as specifically provided otherwise herein) occasioned by any event happening on or about the demised premises and the sidewalks, streets or curbs adjacent thereto. Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, demands, suits, damages, liability and costs (including counsel fees and expenses) arising out of or in any manner connected with any act or omission, negligent or otherwise of Tenant, Landlord or Third Persons, or any of their agents, servants or employees which arise out of or are in any way connected with the erection, maintenance, use, operation, existence or occupation of the demised premises and the streets, sidewalks and curbs adjacent thereto.

Tenant further shall defend, indemnify and hold harmless Landlord from claims, demands, suits, liability for damages for bodily injury or death of any persons or damage or destruction of any property (including loss of use thereof) caused by or in any manner arising out of any breach, violation or nonperformance by Tenant of any covenant, term or provision of this lease.

FIRE INSURANCE

15. Tenant shall not do or permit to be done any act or thing, or omit to do any act or thing, which will invalidate or be in conflict with fire insurance policies covering the building or buildings constituting a part of the demised premises, provided that such policies will permit Tenant to use the premises for the purposes set forth in Paragraph 3 hereof. If by reason of any act or omission committed, suffered or permitted by Tenant the rate of fire insurance upon the building, improvements, machinery and equipment constituting a part of the demised premises shall be increased above the rate which would otherwise be charged, Tenant shall reimburse Landlord as additional rent hereunder, upon demand, for that part of all fire insurance premiums thereafter paid by Landlord applicable to the period of this lease which shall have been charged by reason of such increase.

LOSS BY FIRE AND OTHER PERILS

16. Landlord hereby waives all claims against Tenant for loss or damage to the building or buildings erected on the demised premises caused by fire or explosion or perils normally insured against by standard fire and extended coverage insurance policies, regardless of the cause of such damage including damage resulting from the negligence of Tenant, its agents, servants or employees.

EMINENT DOMAIN

17. If the entire property of which the demised premises forms a part shall be taken by reason of the exercise of the power of eminent domain for any public or quasi public use or purpose, this lease shall terminate on the date title to the premises vests in the taking authority, and rent shall be prorated to such date of termination. If a part of said property be so taken and the part not so taken is, in the opinion of Landlord, insufficient for the reasonable operation of Tenant's business, such opinion to be delivered to Tenant within twenty days after title to the property vests in the taking authority, then either party may cancel or terminate this lease at any time within thirty days after such opinion is given, by giving the other party written notice of cancellation of this lease, and rent shall be prorated to the effective date of cancellation. All damages awarded for such taking shall belong to and be the property of Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises herein leased or for improvements to the demised premises made by Tenant. In the event that neither party gives notice to the other of cancellation as hereinabove in this paragraph provided, this lease shall continue in full force and effect as to that portion of the premises not so taken under the same terms and conditions herein contained, except the rent thereafter payable shall be abated in such amount as the parties agree and Landlord shall promptly thereafter perform all work and furnish all materials necessary to restore and create as a whole architectural unit that portion of the building and improvements (and of the machinery and equipment which are an integral part thereof) on that part of the demised premises not so taken. In the event the parties cannot agree on the amount of rent abatement within ten days after expiration of the

thirty day notice period hereinabove in this paragraph provided, this lease shall thereupon terminate, unless the parties agree to submit the amount of rent abatement to arbitration on mutually agreeable terms.

**DAMAGE OR
DESTRUCTION
TO BUILDINGS**

15. If and whenever during the term hereby demised the building or buildings erected on the demised premises shall be destroyed or damaged by fire or explosion or perils normally insured against by standard fire and extended coverage insurance policies then and in every such event:

(a) If the damage or destruction is such that in the opinion of Landlord, to be given to Tenant not later than thirty (30) days after notice to Landlord by Tenant of the happening of such damage or destruction, it cannot be repaired with reasonable diligence within one hundred and twenty (120) days from the date of such opinion, then either Landlord or Tenant may, within ten (10) days next succeeding the giving of Landlord's opinion as aforesaid, terminate this lease by giving to the other notice in writing of such termination, in which event this lease and the term hereby demised shall thereupon cease and be at an end and the rent and all other payments for which Tenant is liable under the terms of this lease shall be apportioned and paid in full to the date of such destruction or damage; in the event that neither Landlord nor Tenant so terminate this lease, then Landlord shall repair the said building or buildings with all reasonable speed and the rent hereby reserved shall abate from the date of the happening of the damage until the damage shall be made good to the extent of enabling Tenant to use and occupy the demised premises;

(b) If the damage or destruction is such that in the opinion of Landlord, to be given to Tenant not later than thirty (30) days after notice to Landlord by Tenant of the happening of such damage or destruction, it can be repaired with reasonable diligence within one hundred and twenty (120) days from the date of such opinion, then the rent hereby reserved shall abate from the date of the happening of such damage until the damage shall be made good to the extent of enabling Tenant to use and occupy the demised premises and Landlord shall repair the damage with all reasonable speed; but notwithstanding the giving of such opinion by the Landlord, Landlord shall not be liable to Tenant if Landlord shall not actually repair such damage within said 120 day period if Landlord shall proceed diligently with such repair work.

(c) If, in the opinion of Landlord, the damage can be made good as aforesaid within one hundred and twenty (120) days of the date of such opinion and the damage is such that the demised premises are capable of being partially used for the purposes authorized herein, then, until such damage has been repaired, the rent shall abate in the proportion that the part of the

said building which is rendered unfit for occupancy bears to the whole of the said building and Landlord shall repair the damage with all reasonable speed; but notwithstanding the giving of such opinion by the Landlord, Landlord shall not be liable to Tenant if Landlord shall not actually repair such damage within said 120 day period if Landlord shall proceed diligently with such repair work.

MECHANIC'S LIENS

19. Tenant shall not do or suffer anything to be done whereby the demised premises may be encumbered by any mechanic's or other lien or order for the payment of money, and Tenant shall at its own cost and expense, whenever and as often as any mechanic's lien purporting to be for labor, material or services furnished or to be furnished to Tenant, or other lien or order for the payment of money (except such as are based on acts or omissions of Landlord) shall be filed against the demised premises, cause the same to be canceled and discharged of record within thirty (30) days after the date of filing thereof, and further shall indemnify and save harmless Landlord from and against any and all costs, expenses, claims, losses or damages, resulting therefrom or by reason thereof.

DEFAULTS, REMEDIES

20. If Tenant shall fail to pay to Landlord any installment of rent, or any additional rent or other charges as and when the same are required to be paid hereunder, and such default shall continue for a period of fifteen (15) days after notice, or if Tenant shall default in the performance of any of the other terms, covenants or conditions of this lease and such default shall continue for a period of thirty (30) days after notice, (except as otherwise in this lease provided), or if any of the events set forth in Paragraph 11 hereinabove occur, or if Tenant shall be lawfully dispossessed from the demised premises during the term of this lease, then Landlord, without prejudice to any remedies which may be available for arrears of rent or for Tenant's breach of covenant, shall have the option to declare this lease immediately forfeited and the said term ended, and to re-enter and repossess said premises, with or without process of law, using such force as may be necessary to remove all persons or chattels therefrom, and Landlord shall not be liable to any prosecution or for any damages by reason of such re-entry or forfeiture; but notwithstanding such re-entry by Landlord, the Tenant shall, nevertheless, remain and continue liable to Landlord in a sum equal to the rent and any additional rent herein reserved for the balance of the term herein originally granted. Landlord shall not be liable in any way whatsoever for failure to re-let the demised premises. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions of this lease, Landlord shall have the right of injunction and the right to invoke any penalty allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy shall not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly

waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the demised premises, by reason of the violation of Tenant of any of the covenants and conditions of this lease, or otherwise. The word "re-enter" as used herein is not restricted to its technical legal meaning, but is used in its broadest sense.

EFFECT OF WAIVER

21. The failure of Landlord to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions and agreements of this lease, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants or conditions, agreements or options, but the same shall continue and shall remain in full force and effect; and the receipt of any rent or any part thereof, whether the rent be that specifically reserved or that which may become payable under any of the covenants herein contained, and whether the same be received from Tenant or from any one claiming under or through it or otherwise shall not be deemed to operate as a waiver of the rights of Landlord to enforce the payment of rent or charges of any kind previously due or which may thereafter become due, or the right to terminate this lease and to recover possession of the demised premises by summary proceedings or otherwise, as Landlord may deem proper, or to exercise any of the rights or remedies reserved to Landlord hereunder or which Landlord may have at law, in equity or otherwise.

HOLDOVER

22. In the event that Tenant shall remain in the demised premises after the expiration or sooner termination of the term of this lease without having executed a new written lease with Landlord, such holding over shall not constitute a renewal or extension of this lease. Landlord may, at its option, elect to treat Tenant as one who has not removed at the end of his term, and thereupon be entitled to all the remedies against Tenant provided by law in that situation, or Landlord may elect, at its option, to treat such holding over as a tenancy from month to month only.

"FOR SALE" AND "TO LET" SIGNS

23. Landlord may, during the term of this lease, at reasonable times and during usual business hours, enter the premises to view them, and, except in case of renewal or extension, may, at any time within two (2) months next preceding the expiration of the specified term, show the premises to others for the purpose of rental or sale, and may affix to any suitable parts of the premises a notice for lease or sale thereof.

RENT TO BE "NET"

24. It is intended that the rent provided for herein shall be an absolutely net return to Landlord for the term of this lease, free of any expenses or charges with respect to the demised premises, except as otherwise specifically provided in this lease. Except as herein otherwise provided, this Para-

graph 24 shall not apply to any tax based on statutes, laws or ordinances or administrative interpretations thereof in effect at the date of this lease.

ENTIRE AGREEMENT

25. This lease contains the entire agreement between the parties as to the premises and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

NOTICES

26. Any notice, bill, statement, or communication which Landlord may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the demised premises or at the last known business address of Tenant or left at either of the aforesaid places addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed or left at the premises as herein provided. Any notice by Tenant to Landlord must be served by registered or certified mail addressed to Landlord at the address hereinabove set forth or at such other address as Landlord shall designate by written notice.

SIGNS

27. Tenant agrees it will not erect or cause to be erected any signs, notices or advertisements upon the demised premises or affix any such thereto, unless the same shall be erected and affixed according to law, and advertise only a business or use of the demised premises specifically authorized by the provisions hereof. Tenant shall not erect any sign that by reason of its weight or size might damage the demised premises, nor shall Tenant paint any signs, notices or advertising on the exterior walls of the building or buildings without Landlord's written consent. Signs placed on the premises by Tenant shall be removed by it not later than thirty (30) days after the expiration of this lease or any sooner termination thereof, unless Landlord and Tenant agree otherwise, and upon removal of any such signs Tenant shall restore the demised premises to their original condition except for reasonable wear and tear.

SEVERABILITY

28. If it shall be found that any part of this lease is illegal or unenforceable in any state or other political body having jurisdiction, such part or parts of the lease shall be of no force and effect in that state or political body in which they are illegal and unenforceable and this lease shall be treated as if such part or parts had not been inserted.

MARGINAL NOTES

29. The marginal notes are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this lease nor in any way affect this lease. Words

of any gender in this lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

**SUCCESSORS
AND ASSIGNS**

30. Except as otherwise provided herein, the terms and conditions of this lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors or assigns.

**QUIET
ENJOYMENT**

31. Upon paying the rent, additional rent and other sum or sums of money and charges as herein provided and upon performing all of the covenants, conditions and agreements aforesaid, on Tenant's part to be paid, observed and performed, Tenant shall and may peaceably and quietly have, hold and enjoy the demised premises for the term aforesaid, subject, however, to the terms of this lease.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in person or by a duly authorized officer.

WITNESSED BY:

R. H. Gass

Andrew Spicangola

LANDLORD: CHRYSLER MOTORS
CORPORATION

BY G. T. [Signature]
G. T. [Signature]
ITS VICE-PRESIDENT

TENANT: CHRYSLER-FINANCIAL, INC.

BY [Signature]
ITS Pres.

CORPORATE OWNED PROPERTYACKNOWLEDGMENT - LANDLORD BEING A CORPORATION

STATE OF MICHIGAN)
) ss:
 COUNTY OF MACOMB)

BE IT REMEMBERED that on this 24th day of May, 1967, before me, a Notary Public personally came G. T. Higgins as Vice-President of Chrysler Motors Corporation, Landlord herein, and acknowledged as such officer that he did sign the company's name to the foregoing instrument and that the signing of the same is the duly authorized and voluntary act and deed of said Company for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Edward Joseph Mijak
 Notary Public

My Commission expires: _____

EDWARD JOSEPH MIJAK
 Notary Public, Macomb County, Michigan
 My Commission Expires March 15, 1968

TENANT - CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) ss:
 COUNTY OF _____)

BE IT REMEMBERED that on this _____ day of _____, 19____, before me, a Notary Public personally came _____ as _____ of _____ tenant herein, and acknowledged as such officer that he did sign the company's name to the foregoing instrument and that the signing of the same is the duly authorized and voluntary act and deed of said company for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

 Notary Public

My Commission expires _____

EXHIBIT "A"

LEGAL DESCRIPTION

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being at West Babylon, Town of Babylon, Suffolk County, New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Montauk Highway, said point being 150.01 feet westerly measured from the corner formed by the intersection of the said southerly side of Montauk Highway with the westerly side of Bergen Avenue; running thence S. $16^{\circ} 22' 35''$ E., 544.08 feet to the land now or formerly of Bulk; running thence S. $62^{\circ} 20' 40''$ W. along said land now or formerly of Bulk, 88.90 feet; running thence S. $81^{\circ} 15' 30''$ W., still along said land now or formerly of Bulk, 121.10 feet to a point; running thence N. $16^{\circ} 52' 40''$ W. along the land now or formerly of Fifer, Brewer and Meredith and Springer, 364.09 feet to land now or formerly of Schwartzberg; running thence N. $66^{\circ} 43' 40''$ E. along said land formerly of Schwartzberg, 0.19 feet; running thence N. $15^{\circ} 37' 50''$ W. Still along said land formerly of Schwartzberg, and land now or formerly of Tremasco Corp., 214.22 feet to the said southerly side of Montauk Highway; running thence N. $82^{\circ} 38' 30''$ E. along said southerly side of Montauk Highway, 210.00 feet to the point or place of beginning.

EXHIBIT "B"

11-24-65

D. S. Dugano

Dealer Facilities Sales

Center Line

D. S. Shrock

Real Estate

General Offices Highland Park

DEALER FACILITY SITE
BABYLON, NEW YORK

This will serve to confirm our telephone conversation of today wherein I advised you that the attorney for Camp Management Corporation advised that the City of Babylon had granted our request for a special permit. I was advised that the permit allows the "display, sales and servicing of new and used vehicles". The effective date of this permit was November 17, 1965, and we have 100 days thereafter to begin the actual use. Extensions beyond this period are readily secured.

Although the permit, as granted, is unconditional, Chrysler representatives made certain representations to the Board of Appeals at the hearing held on October 27, 1965, to-wit:

1. Any changes in the plans and drawings submitted to the Board were final and only minor changes would be made.
2. All lights would face into the premises.
3. There would be no public address system.
4. On the west side of the building the only windows in the service area would be small and bolted shut.
5. No road testing would be conducted in residential neighborhoods.
6. Only minor painting would be conducted on the premises and no major body repair work, if at all avoidable.
7. A fence will be constructed on that part of the property adjoining residential property and the wishes of adjoining residents of the type of fence to be constructed would be respected subject to concurrence by the Board of Appeals.
8. Junk will be removed from the premises weekly.

In order to protect Chrysler Motors Corporation from possible criticism in the future, it would be advisable to incorporate these conditions in the lease agreement between Chrysler Motors Corporation and the Dealership corporation.

D.S. Shrock

397 a

NEW YORK REGIONAL OFFICE

CHRYSLER-PLYMOUTH DIVISION



CHRYSLER
MOTORS CORPORATION

March 20, 1972

Mr. Leo Schimmerling
Babylon Chrysler Plymouth, Inc.
650 Montauk Highway
West Babylon, New York 11704

Dear Leo:

Enclosed herein please find a copy of the new Lease Agreement
prepared by Chrysler Realty for Babylon Chrysler Plymouth, Inc.,
for term beginning August 1, 1972 and ending July 31, 1977.

We are sending this to you for your review and would appreciate
hearing from you on when you wish to sign this agreement so that
we may get all of the necessary copies signed.

Yours very truly,

S. H. Fogel
Regional Manager

md
enc.

cc: J. Hall

EXHIBIT C

89 CHURCH STREET, WHITE PLAINS, NEW YORK 10601

PARTIES THIS LEASE, made this.....day of, 19....., between CHRYSLER REALTY CORPORATION, a Delaware corporation, having an office at P. O. Box 500, Troy, Michigan 48064, hereinafter designated "Landlord", and DAYTON CHRYSLER-PERKINS, INC., whose address is 650 HORTON HIGHWAY, DAYTON, NEW YORK hereinafter designated "Tenant".

WITNESSETH:

Landlord, in consideration of the premises and of the rents hereinafter reserved and of the covenants, agreements and conditions herein contained to be kept and performed on the part of Tenant, does hereby rent unto Tenant, and Tenant does hereby hire and take, the parcel or parcels of land with the buildings and improvements now or hereafter erected thereon, situated and being in the City of DAYTON County of SUFFOLK State of NEW YORK, described as follows:

ONE EXHIBIT "A" & "B" ATTACHED HERETO AND MAKE A PART HEREOF

with the specific agreement that this is a net, net Lease and it is the intent of this agreement that all costs or expenses arising out of this Lease are to be paid by the Tenant hereunder and that any and all monies expended by Landlord are to be reimbursed to it by Tenant.

THE DEMISED PREMISES

The above described property, and all buildings and building equipment, structures, improvements, machinery, equipment and fixtures, pavement, walks, fences, shrubbery and signs now or hereafter located on the above described property (including, but not limited to, the items listed on the attached Schedule "A") except furniture and trade fixtures, and other property belonging to Tenant, are herein collectively referred to as "the demised premises" and are to be used for motor vehicle sales and service operations only.

TERM

TO HAVE AND TO HOLD the demised premises, unto Tenant upon and subject to all the terms, covenants and conditions herein contained, for a term beginning on the 1st day of AUGUST, 19 72, and ending on the 31st day of JULY, 19 77, or until sooner terminated as hereinafter provided.

And Tenant does covenant and agree to and with Landlord as follows:

RENT 1. Tenant shall pay to Landlord at Landlord's office address above set forth or at such other place as Landlord may from time to time designate in writing, rent for the said term in the total amount of \$ 233,040.00 which said rent shall be paid in monthly installments as follows: THREE THOUSAND EIGHT HUNDRED EIGHTY FOUR (\$3,884.00) DOLLARS TO BE PAID IN ADVANCE ON THE FIRST DAY OF THE MONTH FOR THE TERM HEREOF

in lawful money of the United States. Tenant agrees to pay without demand the said rent in the manner aforesaid and such other sums as are hereinafter provided to be paid as additional rent and any and all other sums and charges hereinafter specified by separate payment and without setoff or deduction whatsoever.

**TAXES AND
ASSESSMENTS**

2. All matters pertaining to the assessment and taxation of Tenant's personal property shall be Tenant's sole responsibility. All matters pertaining to assessment of ad valorem taxes on land, buildings and Landlord's personal property included in the demised premises shall be the sole responsibility of the Landlord. Landlord shall pay all real and personal property taxes and assessments and shall be reimbursed by Tenant for all such liability as hereinafter set forth.

Tenant shall pay to Landlord monthly, as additional rent, the sum of ONE THOUSAND TEN (\$1010.00) Dollars for the estimated real and personal property taxes and assessments, on a prorated monthly basis, related to the premises herein demised as of the date hereof. In the event any such tax and/or assessments shall be increased or decreased, Landlord shall adjust accordingly the additional rental herein provided. Landlord shall provide Tenant with notice of any such adjustment of additional rental, and in event of increase, Tenant shall pay to Landlord within thirty (30) days of such notice the aggregate increase from the effective date thereof to the date of such notice, and shall pay the increased amount on a monthly basis thereafter until the next adjustment because of any increase or decrease in such taxes. Without limiting the generality hereof, it is the intention of the parties that the additional rentals herein provided for shall at all times equal Landlord's tax and assessment obligation for the demised premises.

In the event Landlord shall have received excess additional rentals from Tenant any such excess may be refunded to Tenant, provided Tenant shall not be indebted to Landlord under other provisions of this Lease, or shall be applied as a credit to any future additional rent Tenant may be obligated to pay.

In the event any special assessment levied on the demised premises may be payable in installments over a period greater than one (1) year (irrespective of when Landlord shall make payment) the additional monthly rent herein provided for shall be computed by multiplying the total amount of such assessment by the then current rental factor and dividing such result by 12. "The then current rental factor" shall mean for purposes of this paragraph, the factor being employed by Landlord to other new facility leases at the time such assessment becomes due and payable. The payments provided to be made by Tenant in this paragraph two (2) shall be made without demand on the first day of each calendar month during the term and shall be, for all purposes hereunder, additional rent and for the nonpayment thereof Landlord shall have the same rights and remedies as are provided in this Lease in the case of nonpayment of the monthly rent.

TERMINATION 3. Without limiting the rights or powers of cancellation of this Lease as provided elsewhere herein, this Lease may be cancelled at any time during the initial term or any extension or renewal hereof at the option of the Landlord if Tenant ceases to be an authorized Direct Dealer for Chrysler Motors Corporation products at the demised premises as a result of a termination of the Direct Dealer Agreement with Chrysler Motors Corporation for the demised premises at any time entered into between Tenant and Chrysler Motors Corporation or any subsidiary of Chrysler Corporation, unless Tenant and Chrysler Motors Corporation or a subsidiary of Chrysler Corporation, enter into an immediate superceding Direct Dealer Agreement for Chrysler Motors Corporation products at the demised premises.

Landlord shall notify Tenant in writing of its election to treat this Lease null and void hereunder. Thereupon, cancellation of this Lease will be effective on the last day of the month in which this notice is mailed, at which time this Lease shall terminate as though said date were originally fixed for the termination and expiration of this Lease.

Tenant agrees that in the event without the written consent of Landlord the demised premises shall become and remain vacant or not used for the sale of Chrysler Motors Corporation products for a period of ten (10) days while the same are suitable for such use by Tenant, or in the event they shall be used by any person other than Tenant, or if Tenant shall file a voluntary petition in bankruptcy, or be adjudicated bankrupt or become insolvent according to law or shall make an assignment for the benefit of creditors, then in any of said cases, Landlord may lawfully enter into and upon the demised premises or any part thereof and repossess the same and expel the Tenant and persons claiming under and through it, and remove any effects, forcibly if necessary, without being guilty of trespass or without prejudice to any remedies which

may be available for arrears of rent or for Tenant's breach of covenant. Upon entry as aforesaid, this Lease shall terminate and wholly expire and Tenant covenants that in case of such termination, it will indemnify Landlord against all loss of rent which Landlord may incur by reason of such termination during the residue of the specified term.

UTILITIES 4. Tenant shall use the demised premises and each and every part thereof and the facilities, machinery and equipment therein contained at its own cost and expense, and shall pay or cause to be paid all charges for gas, electricity, light, heat, power, telephone, maintenance, landscaping services, and other services used, rendered or supplied upon or in connection with the demised premises and each and every part thereof.

REPAIRS AND MAINTENANCE 5. Except as specifically provided in Paragraph seventeen (17) herein, Tenant covenants and agrees that it will at its own expense, during the continuance of this Lease, keep the demised premises, including landscaping and plate glass, in good order and repair, and Tenant shall promptly make any and all repairs or replacements necessary for that purpose, whether or not any of such repairs or endorsements shall be interior or exterior, extraordinary as well as ordinary, and whether or not such repairs or replacements shall be of structural nature, and whether or not the same can be said to be within the present contemplation of the parties hereto; and Landlord may have access to the demised premises at reasonable times for the purpose of inspecting the same, but such right of access shall not be construed as obliging Landlord to make any of said repairs to, or replacement of, any part of the demised premises or as obliging Landlord to make any such inspection. Where an inspection reveals repairs or replacements are necessary, Landlord shall give Tenant notice in writing, and thereupon Tenant will, within sixty (60) days after said notice, make such repairs in a good and workmanlike manner. In the event Tenant does not make the said repairs or replacements within sixty (60) days after notice from Landlord, Landlord may thereupon terminate this Lease or enter upon the premises and make the said repairs or replacements itself and charge the cost thereof to Tenant as additional rent hereunder. Tenant, will, at all times during the term of this Lease, keep the sidewalks adjoining the demised premises in good order and repair and free from snow, ice or any unlawful obstructions.

REIMBURSEMENT OF EXPENSES 6. Should Tenant fail to pay to Landlord any monies due Landlord hereunder for rent, taxes, insurance, repairs, or monies expended by Landlord on Tenant's behalf, Tenant does hereby assign to Landlord all credits due or to become due in the future to Tenant from Chrysler Corporation, Chrysler Motors Corporation or the subsidiaries of either corporation (all of the above hereinafter called "Chrysler").

Without limiting the generality of the foregoing Landlord shall have and is hereby given the right to receive, collect and receipt for payment of any and all monies due or to become due from Chrysler and to sue for, settle, adjust and compromise all claims for said monies. The Tenant hereby irrevocably appoints Landlord as attorney-in-fact for the purposes of carrying out the terms of this assignment and taking any action or executing any instruments which may be necessary to accomplish such purpose, including but not limited to, the right of Landlord to receive, endorse in the name of Tenant, and collect all checks and other instruments for the payment of money, payable to or to the order of the Tenant which may be received by Landlord under this assignment and to give full discharge therefor. The Tenant hereby ratifies and confirms all that may lawfully be done by virtue hereof.

The Tenant covenants and agrees with Landlord that it will: (a) obtain from Chrysler any consent to this assignment which may be necessary and (b) from time to time, promptly upon being requested so to do by Landlord, make, execute and deliver to Landlord and, where appropriate, record or file, any and all such other and further assignments, instruments of further assurance, certificates or other documents as may, in the opinion of Landlord, be necessary or desirable in order to effectuate, complete, perfect, continue or preserve all the rights of Landlord given or intended to be given by this assignment.

SURRENDER 7. Tenant shall and will on the last day of the term hereby granted or of any extension or renewal thereof, or sooner termination thereof, peaceably surrender and deliver up the demised premises into the possession of Landlord, its successors or assigns, in as good order, condition and repair as when delivered to Tenant, damage by fire, explosion or the elements only excepted.

CONDITION OF PREMISES AT TIME OF LEASE 8. Tenant further acknowledges that it has examined the demised premises prior to the making of this Lease, and knows the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by Landlord or its agents, which are not herein expressed, and Tenant hereby accepts the demised premises in their present condition.

LAWS, ORDINANCES, ETC. 9. Tenant will at all times during the term of this Lease, at its own cost and expense, perform and comply with all present or future laws, rules, orders, ordinances, and regulations of the United States of America, and of state, county or city governments, and any authority, department or bureau thereof, and of any other municipal, governmental or lawful authority having jurisdiction of the premises whatsoever, relating to, or in any manner affecting, the demised premises, the adjacent sidewalk and landscaping, including fixtures and/or equipment or any buildings thereon or the use thereof without limiting the

generality hereof, Tenant acknowledges and agrees to comply with the specific conditions respecting use, if any, attached hereto entitled zoning and other restrictions, which attachment is made a part hereof. In the event Tenant shall fail to perform any obligation required hereunder and such failure shall continue for a period of five (5) days after written notice to Tenant from either Landlord or a governmental agency authorized to enforce any law, ordinance or regulation, Landlord may, but shall be under no obligation to, perform on Tenant's behalf, and Tenant shall pay Landlord any costs incurred thereby.

**COVENANT
AGAINST
ASSIGNMENT,
SUBLETTING**

10. Tenant shall not assign this lease or hypothecate or mortgage the same or sublet the demised premises or any part thereof without the prior written consent of Landlord, and any assignment, transfer, hypothecation, mortgaging or subletting without the written consent of Landlord shall be void.

**ALTERATIONS,
ADDITIONS
AND
IMPROVEMENTS**

11. Tenant shall not make any alterations, changes, additions or improvements to the demised premises without Landlord's written consent, and all alterations, changes, additions or improvements made by either of the parties hereto upon the demised premises, except movable office furniture and trade fixtures put in at the expense of Tenant, shall become the property of Landlord and shall remain upon and be surrendered with the demised premises upon the expiration of this Lease, or any sooner termination thereof, except as Landlord may elect otherwise as hereinafter provided. If Landlord shall so elect, then such alterations, changes, additional or improvements made by Tenant upon the demised premises as Landlord shall select shall be removed by Tenant and Tenant shall restore the demised premises to the original condition thereof at its own cost and expense within thirty (30) days after notice from Landlord of such election, such notice to be given not later than ten (10) days after the expiration of this Lease or any sooner termination thereof. The movable furniture and trade fixtures of Tenant, however, shall remain Tenant's property at all times and shall be removed at the termination of this Lease, any damage to the premises in the course of such removal to be repaired by Tenant at Tenant's own cost and expense.

**RIGHT TO
MORTGAGE**

12. This Lease is and shall be subject and subordinate to all mortgages and ground or underlying leases which may now or hereafter affect the real property demised hereunder, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee. In confirmation of such subordination, Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments subordinating this Lease to the lien of any such mortgage or mortgages as shall be desired by Landlord and any mortgagees or proposed mortgagees and hereby irrevocably appoints Landlord the attorney-in-fact of

Tenant to execute and deliver any such instrument or instruments for and in the name of Tenant. Tenant further covenants and agrees to execute upon demand such further instrument or instruments (including cancellation and re-execution of this Lease as a Sublease) necessary to create a sublease of the demised premises to Tenant upon the same terms and conditions as are provided herein in the event that Landlord effects a sale and lease back of the demised premises.

**PUBLIC
LIABILITY
INSURANCE**

13. Tenant, at its expense, shall provide and keep in force for the benefit of Landlord and Tenant, respectively, comprehensive general liability insurance in the minimum limits of liability with respect to bodily injury of \$250,000.00 for each person and \$500,000.00 for each occurrence and in respect to property damage \$500,000.00 for each accident. The insurance shall include contractual liability coverage specifically insuring the agreements made by Tenant in this Paragraph 13 and in Paragraph 14 following, shall cover the entire demised premises, including sidewalks, streets and ways adjoining the demised premises, shall be issued by insurance companies and in form satisfactory to Landlord, and shall name Landlord as an additional named insured, and shall provide for at least ten days prior written notice to Landlord in the event of cancellation or any material change, and copies of such policy or policies shall be delivered to Landlord prior to the commencement of the term of this Lease and thereafter no later than ten (10) days prior to the expiration date of the policy then in force.

**DAMAGE TO
PERSON OR
PROPERTY
INDEMNIFI-
CATION**

14. Landlord shall not in any event be responsible, and Tenant hereby specifically assumes responsibility for any injury or death of any persons (including employees of Tenant and Landlord) and damage, destruction or loss of use of any property, including the demised premises (except as specifically provided otherwise herein) occasioned by any event happening on or about the demised premises and the sidewalks, streets or curbs adjacent thereto. Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims, demands, suits, damages, liability and costs (including counsel fees and expenses) arising out of or in any manner connected with any act or omission, negligent or otherwise of Tenant, Landlord or third persons, or any of their agents, servants or employees which arise out of or are in any way connected with the erection, maintenance, use, operation, existence or occupation of the demised premises and the streets, sidewalks and curbs adjacent thereto.

Tenant further shall defend, indemnify and hold harmless Landlord from claims, demands, suits, liability for damages for bodily injury or death of any persons or damage or destruction of any property (including loss of use thereof) caused by or in any manner arising out of any breach, violation or nonperformance by Tenant of any covenant, term or provision of this Lease.

**FIRE
INSURANCE**

15. Landlord shall be responsible for fire and extended coverage insurance on the demised premises provided, however, Tenant shall not do or permit to be done any act or thing or omit to do any act or thing which will invalidate or be in conflict with the fire insurance policies covering the building or buildings constituting a part of the demised premises. If by reason of any act or omission committed, suffered or permitted by Tenant the rate of fire insurance upon the building, improvements, machinery and equipment constituting a part of the demised premises shall be increased above the rate which would otherwise be charged, Tenant shall reimburse Landlord as additional rent hereunder, upon demand, for that part of all fire insurance premiums thereafter paid by Landlord applicable to the period of this Lease which shall have been charged by reason of such increase.

**LOSS BY FIRE
AND OTHER
PERILS**

16. Landlord hereby waives all claims against Tenant for loss or damage to the building or buildings erected on the demised premises caused by fire or explosion or perils normally insured against by standard fire and extended coverage insurance policies, regardless of the cause of such damage including damage resulting from the negligence of Tenant, its agents, servants or employees.

**EMINENT
DOMAIN**

17. If the entire property of which the demised premises forms a part shall be taken by reason of the exercise of the power of eminent domain for any public or quasi public use or purpose, this Lease shall terminate on the date title to the premises vests in the taking authority, and rent shall be prorated to such date of termination. If a part of said property be so taken and the part not so taken is, in the opinion of Landlord, insufficient for the reasonable operation of Tenant's business, such opinion to be delivered to Tenant within twenty (20) days after title to the property vests in the taking authority, then either party may cancel or terminate this Lease at any time within thirty (30) days after such opinion is given, by giving the other party written notice of cancellation of this Lease, and rent shall be prorated to the effective date of cancellation. All damages awarded for such taking, except damages awarded for trade fixtures and/or furniture of Tenant, shall belong to and be the property of Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises herein leased or for improvements to the demised premises made by Tenant. In the event that neither party gives notice to the other of cancellation as hereinabove in this paragraph provided, this Lease shall continue in full force and effect as to that portion of the premises not so taken under the same terms and conditions herein contained, except that monthly rental payable thereafter shall be abated by the actual amount of the award, less Landlord's costs incurred in such proceedings and the cost of restoration hereafter provided multiplied by the then current rental factor and dividing such result by 12. "The then current rental factor" shall mean for purposes of this paragraph, the factor being employed by Landlord to other new facility leases at the time restoration shall have been commenced on the premises leased hereunder. Landlord shall promptly

perform all work and furnish all materials necessary to restore and create as a whole architectural unit that portion of the building and improvements (and of the machinery and equipment which are an integral part thereof) on that part of the demised premises not so taken.

**DAMAGE OR
DESTRUCTION
TO BUILDINGS**

18. If and whenever during the term hereby demised the building or buildings erected on the demised premises shall be destroyed or damaged by fire or explosion or perils normally insured against by standard fire and extended coverage insurance policies then and in every such event:

(a) If the damage or destruction is such that in the opinion of Landlord, to be given to Tenant not later than thirty (30) days after notice to Landlord by Tenant of the happening of such damage or destruction, it cannot be repaired with reasonable diligence within one hundred and eighty (180) days from the date of such opinion, then either Landlord or Tenant may, within ten (10) days next succeeding the giving of Landlord's opinion as aforesaid, terminate this Lease by giving to the other notice in writing of such termination, in which event this Lease and the term hereby demised shall thereupon cease and be at an end and the rent and all other payments for which Tenant is liable under the terms of this Lease shall be apportioned and paid in full to the date of such destruction or damage; in the event that neither Landlord nor Tenant so terminate this Lease, then Landlord shall repair the said building or buildings with all reasonable speed and the rent hereby reserved shall abate from the date of the happening of the damage until the damage shall be made good to the extent of enabling Tenant to use and occupy the demised premises;

(b) If the damage or destruction is such that in the opinion of Landlord, to be given to Tenant not later than thirty (30) days after notice to Landlord by Tenant of the happening of such damage or destruction, it can be repaired with reasonable diligence within one hundred and eighty (180) days from the date of such opinion, then the rent hereby reserved shall abate from the date of the happening of such damage until the damage shall be made good to the extent of enabling Tenant to use and occupy the demised premises and Landlord shall repair the damage with all reasonable speed; but notwithstanding the giving of such opinion by the Landlord, Landlord shall not be liable to Tenant if Landlord shall not actually repair such damage within said 180 day period if Landlord shall proceed diligently with such repair work.

(c) If, in the opinion of Landlord, the damage can be made good as aforesaid within one hundred and eighty (180) days of the date of such opinion and the damage is such that the demised premises are capable of being partially used for the purposes authorized herein, then, until such damage has been repaired, the rent shall abate in the proportion that the part of the said building which is rendered unfit for

occupancy bears to the whole of the said building and Landlord shall repair the damage with all reasonable speed; but notwithstanding the giving of such opinion by the Landlord, Landlord shall not be liable to Tenant if Landlord shall not actually repair such damage within said 180 day period if Landlord shall proceed diligently with such repair work.

MECHANIC'S LIENS

19. Tenant shall not do or suffer anything to be done whereby the demised premises may be encumbered by any mechanic's or other lien or order for the payment of money, and Tenant shall at its own cost and expense, whenever and as often as any mechanic's lien purporting to be for labor, material or services furnished or to be furnished to Tenant, or other lien or order for the payment of money (except such as are based on acts or omissions of Landlord) shall be filed against the demised premises, cause the same to be cancelled and discharged of record within thirty (30) days after the date of filing thereof, and further shall indemnify and save harmless Landlord from and against any and all costs, expenses, claims, losses or damages, resulting therefrom or by reason thereof.

DEFAULTS, REMEDIES

20. If Tenant shall fail to pay to Landlord any installment of rent, or any additional rent or other charges as and when the same are required to be paid hereunder, and such default shall continue for a period of fifteen (15) days after notice, then in addition to the other provisions contained elsewhere herein and below, Landlord may, but shall be under no obligation to deduct such sum from any other of Tenant's accounts or funds in Landlord's possession, or if Tenant shall default in the performance of any of the other terms, covenants or conditions of this Lease and such default shall continue for a period of thirty (30) days after notice, (except as otherwise in this Lease provided), or if any of the events set forth in Paragraph 3 hereinabove occur, or if Tenant shall be lawfully dispossessed from the demised premises during the term of this Lease, then Landlord, without prejudice to any remedies which may be available for arrears of rent or for Tenant's breach of covenant, shall have the option to declare this Lease immediately forfeited and the said term ended, and to re-enter and repossess said premises, with or without process of law, using such force as may be necessary to remove all persons or chattels therefrom, and Landlord shall not be liable to any prosecution or for any damages by reason of such re-entry or forfeiture, but notwithstanding such re-entry by Landlord, the Tenant shall, nevertheless, remain and continue liable to Landlord in a sum equal to the rent and any additional rent herein reserved for the balance of the term herein originally granted. Landlord shall not be liable in any way whatsoever for failure to relet the demised premises. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions of this Lease, Landlord shall have the right of injunction and the right to invoke any penalty allowed at law or in equity as

If re-entry, summary proceedings and other remedies were not herein provided for. Tenant hereby empowers any Clerk of the Court or attorney to appear for Tenant in any and all actions which may be brought for rent and/or the charges, payments, costs and expenses agreed to be paid by Tenant and/or to sign for Tenant an agreement entering into an amicable action for the recovering of rent or other charges, and in such suits to confess judgment against Tenant for all or any part of the rent specified herein and other charges and with interest at the rate of 7% plus attorney fees. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the demised premises, by reason of the violation of Tenant of any of the covenants and conditions of this Lease, or otherwise. The word "re-enter" as used herein is not restricted to its technical legal meaning, but is used in its broadest sense.

EFFECT OF WAIVER

21. The failure of Landlord to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions and agreements of this Lease, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants, or conditions, agreements or options, but the same shall continue and shall remain in full force and effect; and the receipt of any rent or any part thereof, whether the rent be that specifically reserved or that which may become payable under any of the covenants herein contained, and whether the same be received from Tenant or from any one claiming under or through it or otherwise shall not be deemed to operate as a waiver of the rights of Landlord to enforce the payment of rent or charges of any kind previously due or which may thereafter become due, or the right to terminate this Lease and to recover possession of the demised premises by summary proceedings or otherwise, as Landlord may deem proper, or to exercise any of the rights or remedies reserved to Landlord hereunder or which Landlord may have at law, in equity or otherwise.

HOLDING OVER

22. In the event that Tenant shall remain in the demised premises after the expiration or sooner termination of the term of this Lease without having executed a new written lease with Landlord, such holding over shall not constitute a renewal or extension of this Lease. Landlord may, at its option, elect to treat Tenant as one who has not removed at the end of his term, and thereupon be entitled to all the remedies against Tenant provided by law in that situation, or Landlord may elect, at its option, to treat such holding over as a tenancy from month to month only.

"FOR SALE" AND "TO LET" 23. Landlord may, during the term of this Lease, at reasonable times and during usual business hours,

SIGNS enter the premises to view them, and except in case of renewal or extension, may, at any time within two (2) months next preceding the expiration of the specified term, show the premises to others for the purpose of rental or sale, and may affix to any suitable parts of the premises a notice for lease or sale thereof.

RENT TO BE "NET" 24. It is intended that the rent and additional rent provided for herein shall be an absolutely net return to Landlord for the term of this Lease, free of any expenses or charges with respect to the demised premises.

ENTIRE AGREEMENT 25. This Lease contains the entire agreement between the parties as to the premises and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

NOTICES 26. Any notice, bill, statement, or communication which Landlord may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the demised premises or at the last known business address of Tenant or left at either of the aforesaid places addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed or left at the premises as herein provided. Any notice by Tenant to Landlord must be served by registered or certified mail addressed to Landlord at the address hereinabove set forth or at such other address as Landlord shall designate by written notice.

SIGNS 27. Tenant agrees it will not erect or cause to be erected any signs, notices or advertisements upon the demised premises or affix any such thereto, unless the same shall be erected and affixed according to law, local regulations and ordinances and advertise only a business or use of the demised premises specifically authorized by the provisions hereof and Tenant's Direct Dealer Agreement. Tenant shall not erect any sign that by reason of its weight or size might damage the demised premises, nor shall Tenant paint any signs, notice or advertising on the exterior walls of the building or buildings without Landlord's written consent. Signs placed on the premises by Tenant shall be removed by it not later than the expiration date of this Lease or any sooner termination thereof, unless Landlord and Tenant agree otherwise, and upon removal of any such signs Tenant shall restore the demised premises to their original condition except for reasonable wear and tear.

QUIET ENJOYMENT 28. Upon paying the rent, additional rent and other sum or sums of money and charges as herein provided and upon performing all of the covenants, conditions and agreements aforesaid, on Tenant's part to be paid, observed and performed, Tenant shall and may peaceably and quietly have, hold and enjoy the demised premises for the term aforesaid, subject, however, to the terms of this Lease.

**SECURITY
DEPOSIT**

29. (a) Tenant has this day deposited with the Landlord the sum of \$ 4,000.00 as security for the full and faithful performance by the Tenant of all of the terms, covenants and conditions upon the Tenant's part to be performed, which said sum shall be returned to the Tenant within thirty (30) days after the time fixed as the expiration of the term herein, provided the Tenant has fully and faithfully carried out all the terms, covenants and conditions on his part to be performed. In the event of default by the Tenant in respect to any of the terms, covenants, conditions or provisions of said lease, the Landlord may use, apply or retain all or any part of the said security deposit in payment of any expense incurred by Landlord in curing of any default by Tenant, or at Landlord's option, the deposit may be retained by Landlord in whole or partial liquidation of damages suffered by Landlord by reason of Tenant's default. The Landlord may return the security or unused portion to the original Tenant, regardless of any assignments of the within lease, in the absence of evidence satisfactory to the Landlord of an assignment of the right to receive such security or any part or balance thereof.

(b) Unless otherwise required by state or local law, ordinance or ruling, Tenant shall not be entitled to any interest or credit on the aforesaid security deposit and Landlord may deposit same with its own general funds. Where applicable to this paragraph, state and local law shall control Landlord's treatment of this security deposit.

**SUCCESSORS
AND ASSIGNS**

30. Except as otherwise provided herein, the terms and conditions of this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors or assigns.

SEVERABILITY

31. If it shall be found that any part of this Lease is illegal or unenforceable in any state or other political body having jurisdiction, such part or parts of the Lease shall be of no force and effect in that state or political body in which they are illegal and unenforceable and this Lease shall be treated as if such part or parts had not been inserted.

**MARGINAL
NOTES**

32. The marginal notes are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease. Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

In WITNESS WHEREOF, the parties hereto have executed this agreement in person or by a duly authorized officer.

WITNESSED BY:

LANDLORD: CHRYSLER REALTY CORPORATION

BY: C. R. GREEN, JR.

ITS: Vice-President

TENANT: ROBERT G. GREEN, JR.

BY:

ITS:

ACKNOWLEDGMENT - LANDLORD BEING A CORPORATION

STATE OF MICHIGAN)
) ss
 COUNTY OF OAKLAND)

BE IT REMEMBERED that on this day of

19....., before me, a Notary Public personally came

as Vice-President of Chrysler Realty Corporation, Landlord herein, and acknowledged as such officer that he did sign the company's name to the foregoing instrument and that the signing of the same is the duly authorized and voluntary act and deed of said Company for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Notary Public

My Commission expires:

TENANT - CORPORATE ACKNOWLEDGMENT

STATE OF)
) ss
 COUNTY OF)

BE IT REMEMBERED that on this day of

19....., before me, a Notary Public personally came

as of

tenant herein, and acknowledged as such officer that he did sign the company's name to the foregoing instrument and that the signing of the same is the duly authorized and voluntary act and deed of said company for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Notary Public

My Commission expires:

EXHIBIT "A"

LEGAL DESCRIPTION

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being at West Babylon, Town of Babylon, Suffolk County, New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Montauk Highway, said point being 150.01 feet westerly measured from the corner formed by the intersection of the said southerly side of Montauk Highway with the westerly side of Bergen Avenue; running thence S. $16^{\circ} 22' 35''$ E., 544.08 feet to the land now or formerly of Bulk; running thence S. $62^{\circ} 20' 40''$ W. along said land now or formerly of Bulk, 88.90 feet; running thence S. $81^{\circ} 15' 30''$ W., still along said land now or formerly of Bulk, 121.10 feet to a point; running thence N. $16^{\circ} 52' 40''$ W. along the land now or formerly of Fifer, Brewer and Meredith and Springer, 364.09 feet to land now or formerly of Schwartzberg; running thence N. $66^{\circ} 43' 40''$ E. along said land formerly of Schwartzberg, 0.19 feet; running thence N. $15^{\circ} 37' 50''$ W. Still along said land formerly of Schwartzberg, and land now or formerly of Tremasco Corp. 214.22 feet to the said southerly side of Montauk Highway; running thence N. $82^{\circ} 38' 30''$ E. along said southerly side of Montauk Highway, 210.00 feet to the point or place of beginning.

EXHIBIT "B"

L. Pagano

D. D. Shrock

Dealer Facilities Sales

Real Estate

11-24-65

Center Line

General Offices Highland Park

DEALER FACILITY SITE
BABYLON, NEW YORK

This will serve to confirm our telephone conversation of today wherein I advised you that the attorney for Campus Management Corporation advised that the City of Babylon had granted our request for a special permit. I was advised that the permit allows the "display, sales and servicing of new and used vehicles". The effective date of this permit was November 17, 1965, and we have 100 days thereafter to begin the actual use. Extensions beyond this period are readily secured.

Although the permit, as granted, is unconditional, Chrysler representatives made certain representations to the Board of Appeals at the hearing held on October 27, 1965, to-wit:

1. Any changes in the plans and drawings submitted to the Board were final and only minor changes would be made.
2. All lights would face into the premises.
3. There would be no public address system.
4. On the west side of the building the only windows in the service area would be small and bolted shut.
5. No road testing would be conducted in residential neighborhoods.
6. Only minor painting would be conducted on the premises and no major body repair work, if at all avoidable.
7. A fence will be constructed on that part of the property adjoining residential property and the wishes of adjoining residents of the type of fence to be constructed would be respected subject to concurrence by the Board of Appeals.
8. Junk will be removed from the premises weekly.

In order to protect Chrysler Motors Corporation from possible criticism in the future, it would be advisable to incorporate these conditions in the lease agreement between Chrysler Motors Corporation and the dealership corporation.

RECEIVED

NOV 29 1965

J. W. K. K.



82-175-0100 7-00

CHRYSLER REALTY CORPORATION
POST OFFICE BOX 500
TROY, MICHIGAN 48064

DATE		
MO	DAY	YEAR
01	28	72

BABYLON C/P INC
650 MONTAUK HIGHWAY
BABYLON N Y 11702

STANDARD FORMS	CREDIT MEMO	DEBIT MEMO
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

TENANT ACCOUNT NUMBER 62699

INVOICE NUMBER 21307377

TO CHARGE YOU RENT FOR THE MONTH OF FEBRUARY 1972

17560 650 MONTAUK HIGHWAY

4,234.00

CURRENT TOTAL

4,234.00

PREVIOUS BALANCE

.00

TOTAL AMOUNT DUE

4,234.00

PAID	
CHK	11181
DATE	2/3/72

4151

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

----- x
CHRYSLER MOTORS CORPORATION, :

Plaintiff, :

- against - :

FRANK WICKS and ELIZABETH WICKS, :

Defendants. :

Index No.

133691/65

COMPLAINT

DUPLICATE ORIGINAL

----- x
The plaintiff above named, by Kelley Drye
Newhall Maginnes & Warren, its attorneys, for its complaint
to obtain a judgment herein declaring the rights and legal
relations of the parties to this action in the respects
hereinafter set forth, respectfully alleges upon information
and belief:

1. The plaintiff, Chrysler Motors Corporation,
is a corporation duly organized and existing under the laws
of the State of Delaware and is authorized to do business
in the State of New York for which purpose it has an office
and principal place of business at No. 200 Park Avenue,
County, City and State of New York.

2. That the defendants are the owners of all
that certain lot, piece or parcel of land situate, lying
and being at Port Jefferson Station, Town of Brookhaven,
County of Suffolk and State of New York bounded and des-
cribed as follows:

BEGINNING at a point on the westerly side of
Terryville Road where same is intersected by
the southerly side of premises herein and land
now or formerly of Karl;

RUNNING THENCE along said last mentioned land and land now or formerly of O. B. Davis, Inc. North 84 degrees 12 minutes 53 seconds west 379.85 feet to the easterly side of Nesconset-Port Jefferson Highway;

THENCE along the easterly side of Nesconset-Port Jefferson Highway the following two courses and distances:

- (1) Northerly along a curve bearing left having a radius of 3891.72 feet a distance of 412.66 feet to a monument;
- (2) North 41 degrees 28 minutes 00 seconds east 86.07 feet;

THENCE South 65 degrees 22 minutes 15 seconds east 89.44 feet to the westerly side of Terryville Road;

THENCE South 07 degrees 42 minutes 07 seconds west along the westerly side of Terryville Road 363.94 feet; to the point or place of beginning.

3. That on or about the 16th day of July, 1965, the defendants for a valuable consideration granted an Option in writing whereby they did give and grant to the plaintiff, among other things, the exclusive right and option to purchase the above described property. A copy of said Option is annexed hereto as Exhibit A.

4. That on or about the 13th day of August, 1965, the said Option was amended as set forth in the Option Addendum signed by defendants, a copy of which is annexed hereto as Exhibit B. The said Option Addendum, among other things, recites that plaintiff's purpose for purchasing said property is to erect a new car sales and service agency thereon, and provides that the plaintiff shall have a period of one year to obtain the necessary governmental authorization to permit its intended use of said property.

5. That thereafter plaintiff duly exercised its option to purchase the aforesaid property and the defendants thereupon became obligated to transfer and convey to plaintiff the said property, closing of title to be contingent upon plaintiff's obtaining within one year the necessary governmental authorization to permit its intended use of the subject parcel.

6. That the defendants have refused to allow the plaintiff the agreed upon time within which to obtain the necessary governmental authorization for the intended use of the aforesaid property and to cooperate with plaintiff in obtaining such authorization.

7. That in breach of their agreement defendants have unilaterally fixed a closing date for December 2, 1965 and advised plaintiff that unless it closed title on that day, they would declare the agreement null and void.

8. That it is essential to the preservation of plaintiff's rights, that a declaratory judgment be entered in this Court, pursuant to Section 3001 of the Civil Practice Law and Rules, declaring that the plaintiff has a valid and existing agreement to purchase the aforesaid property and requiring that the defendants cooperate with plaintiff in obtaining all necessary governmental authorization to permit plaintiff's intended use of said property and that plaintiff have such time as may be determined by this Court to be reasonable within which to obtain such authorization.

9. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands judgment against defendants as follows:

1. That the Court declare the rights and other legal relations of the plaintiff and defendants in the aforesaid property by reason of the written instruments annexed hereto as Exhibits A and B and the exercise by plaintiff of the Option to purchase set forth therein;

2. That this Court declare that the plaintiff and defendants have entered into a valid and existing agreement of sale with respect to the aforesaid property and that it order and direct the defendants to cooperate with plaintiff in obtaining all necessary governmental authorization to permit plaintiff's intended use of said property and grant to the plaintiff such time as may be determined by it to be reasonable within which to obtain said necessary governmental authorization; and

3. That the plaintiff have such other and further relief as to this Court shall seem necessary and proper in the premises together with the costs and disbursements of this action.

Dated: New York, New York
December 1, 1965

KELLEY DRYE NEWHALL MAGINNES & WARREN
Attorneys for Plaintiff
Office and P. O. Address
350 Park Avenue
New York, New York 10022

Frank Wicks and Elizabeth Wicks, hereinafter called the "Grantor" for and in consideration of the sum of One Dollar (\$1.00), the receipt and adequacy of which is hereby acknowledged, hereby gives and grants Chrysler Motors Corp., hereinafter called the "Grantee", or assigns, the exclusive right and option to purchase on or before thirty (30) days from the date hereof the following described real estate and property, situated in the Town of Brookhaven, County of Suffolk, State of New York.

to wit: As shown on map of the said premises, which was taken from survey prepared by Hawkins & Webb July, 1957, and which survey the premises are sold subject to. Subject to covenants and restrictions of record, and zoning ordinances of the Town of Brookhaven.

together with all improvements and appurtenances and

on the following terms and conditions:

1. The purchase price shall be \$126,500.00 all cash at time of closing, based on an allocation between land and improvements, if any, to be determined prior to closing. Closing shall take place at 34 Willis Avenue, Mineola, New York, at office of seller's attorney, or at such other place as Grantor and Grantee agree, within thirty (30) days after this Option is exercised or within thirty (30) days after the condition contained in Paragraph 4 is satisfied.
2. If Grantee exercises this Option within 30 days after the date of exercise, Grantor shall furnish to Grantee a policy of title insurance covering said land and shall be obligated to defend Grantee from all liens, encumbrances, restrictions, easements, and taxes. In the event that title is not good and marketable, then, at the option of the Grantee, title may be taken in its existing condition or this Option may be declared null and void, whereupon the consideration paid for this Option is to be returned to the Grantee. Grantor will convey title to Grantee by a good and sufficient recordable bargain and sale deed, free and clear of all liens, restrictions, easements, and encumbrances other than taxes for the current year.
3. The Grantee shall have the right during the period this Option is in effect to enter upon said land and to make test borings, surveys, studies or for any other purpose commensurate with ascertaining the suitability of the land for Grantee's purposes. Grantee shall hold Grantor harmless from any and all liability or damages which Grantor may sustain by reason of any entry on said land by Grantee or its agents. If this Option is not exercised, Grantee shall return said property to Grantor in the same condition and status as it was in at the time this Option is executed.

4. If the said property is not presently zoned to permit the use contemplated by Grantee and if, in the judgment of Grantee, rezoning (or other governmental authorization) is necessary to permit such use, then, in such case, notwithstanding any other time limitation expressed herein, the exercise of this Option is conditioned on obtaining rezoning or other governmental authorization. Grantee shall act in a diligent manner and if the property is not so rezoned within a reasonable time then in that event, at Grantee's election (a) the consideration paid for this Option shall be returned to Grantee, or (b) Grantee may waive this condition. The Grantor agrees to cooperate with the Grantee, its agents, servants, contractors, and employees, in securing the rezoning described above.

5. This Option is to be exercised by the Grantee by mailing written notice to Grantor at
 19 Davis Avenue, Port Jefferson Station, N.Y.
 (Address) (City) (State)
 on or before August 15th, 1965
 (Month) (Date) (Year)

6. Except as otherwise provided herein, if Grantee does not exercise this Option within said time or fails to pay the cash required at closing, then the Grantee will not be entitled to any refund of the monies paid for this Option, and such monies may be retained by Grantor.

7. Taxes for the current year are to be prorated as of the date of closing. There shall be no proration of insurance premiums applicable to fire and other insurance policies covering the property.

8. Grantor and Grantee agree that any real estate or brokerage commission is to be paid by the Grantor.

9. ~~In the event this Option is exercised, the consideration paid for it shall apply on the purchase price.~~

10. In case of loss or damage by fire or otherwise to the improvements, if any, now existing on the said premises, between the date hereof and the final consummation of sale if this Option is exercised, Grantee shall have the right to rescind this Option and if Grantee does so rescind, all payments made hereunder shall be returned to Grantee, or Grantee may exercise this option and complete the purchase in which case Grantee shall receive the benefit of any insurance proceeds paid or to be paid for such loss or damage.

10A See Rider A attached hereto

Signed, Sealed and Delivered this 16th day of July, 1965

WITNESSED BY:

OPTIONOR:

Frank W. [unclear]
Elyah W. [unclear]

DUPLICATE

RIDER A

The within option in so far as the grantors herein are concerned is conditioned upon the grantee delivering along with the purchase price as set forth in Paragraph 1 of the option a stipulation of discontinuance of a certain action originally instituted in the Supreme Court of the State of New York, County of New York, and upon which venue was changed by order of the Court to Suffolk County, entitled Jefferson Compacts, Inc., plaintiff, against Frank Wicks, Elizabeth Wicks and Francis B. Froehlich, defendants.

The grantees are further to deliver general releases from Jefferson Compacts, Inc. and Theodore Panebianco individually. Such general releases shall cover and waive all interest, if any, which the said corporation or Panebianco may have in and to the moneys heretofore deposited pursuant to the terms of the contract made between the grantors and Jefferson Compacts, Inc., and also shall cover the alleged claim made by the plaintiff for the sum of Five thousand Dollars (\$5,000.00) for surveys, etc., purportedly to have been spent to obtain the zoning change. In setting forth this requirement it is understood that it is without prejudice to the defendants' position as set forth in the answer contained in the said law suit.

The grantees shall also deliver a general release from the broker, Garrahan Realty, on the aforesaid transaction.

DUPLICATE-ORIGINAL

423 a

EXHIBIT B

OPTION ADDENDUM

WHEREAS, Frank Wicks and Elizabeth Wicks, his wife, have previously executed a certain Option dated 16th, July, 1965, giving and granting Chrysler Motors Corporation the exclusive right and Option to Purchase certain property in the Town of Brookhaven, Long Island, New York, said property being more particularly described in said Option, and

WHEREAS, a restrictive covenant has been recorded by the Town of Brookhaven obligating the Grantors, their heirs, successors, and assigns to obtain site approval of all construction from the Town of Brookhaven Planning Board, and prior approval of all curb cuts from the New York State Highway Department, and

WHEREAS, Chrysler Motors Corporation, the Optionee, may purchase this certain parcel of land for the specific purpose of erecting a new car sales and service agency together with normal accessory use, and

WHEREAS, the Optionee may need additional time beyond the 15th, Sept., 1965 Option expiration date in which to obtain the necessary governmental authorization for the intended use of the property described in said Option,

NOW THEREFORE, Frank Wicks and Elizabeth Wicks, his wife, hereby gives and grants Chrysler Motors Corporation hereinafter called the "Grantee" this Rider B to the original Option signed, sealed, and delivered on the 16th, July, 1965:

Notice of intention to exercise this Option by the Grantee shall be by mailing written notice to the Grantor at 19 Davis Avenue, Port Jefferson Station, New York, on or before September 15, 1965. Notwithstanding, the time required within which "Closing" shall take place, however, such Closing is contingent upon Grantee obtaining the necessary governmental authorization to permit its intended use of the subject parcel. Grantee shall act in a diligent

manner and if the governmental authorizations are not obtained within a reasonable time, but in no event to exceed one year, then in that event, at Grantee's election (A) Grantee may waive this contingency, or (B) the Option is null and void.

Signed, Sealed and Delivered this 13th day of August, 1965.

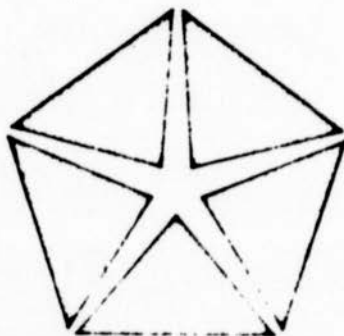
WITNESSED BY:

[Signature]
[Signature]
DUPLICATE-ORIGINAL

OPTIONOR:

Frank Wicks
Elizabeth Wicks
DUPLICATE-ORIGINAL

ANNUAL REPORT 1967



CHRYSLER CORPORATION

K. O. N. & H.
1967

426 a

ers and Directors

AD OF DIRECTORS

Townsend
man
Boyd
dent
chart S. Bright
President—Operations Staff
N. Buckminster
President—Corporate Staffs
leigh A. Burke
Smiral, U.S.N. Retired
loward L. Clark
resident, American Express Company
ohn A. Coleman
artner, Adler, Coleman & Co.
J. Richardson Dilworth
Rockefeller Family & Associates
Georges Heril
President, Société des Automobiles Simca
William R. Hewlett
President, Hewlett-Packard Company
Tom Killefer
Vice President—Finance
John D. Leary
Vice President—Administration
George H. Love
Chairman, Consolidation Coal Company
L. F. McCollum
Chairman, Continental Oil Company
Neil McElroy
Chairman, The Procter & Gamble Company
R. E. McNeill, Jr.
Chairman, Manufacturers Hanover Trust Company
I. J. Minett
Group Vice President—International
Robert G. Page
Chairman, Phelps Dodge Corporation
Leonard T. Perring
Chairman, The Detroit Bank and Trust Company
J. Riccardo
Vice President—U.S. and Canadian Automobiles
B. Sample
Little Chemicals Corporation
American World Airways, Inc.
Newhall Maginnes & Warren
Inc.

Executive Committee

Lynn Townsend, *Chairman*
V. E. Boyd
George H. Love
R. E. McNeill, Jr.
Raymond T. Perring
Robert B. Semple
Juan T. Trippe

Finance Committee

R. E. McNeill, Jr., *Chairman*
V. E. Boyd
John A. Coleman
J. Richardson Dilworth
Tom Killefer
George H. Love
L. F. McCollum
Lynn Townsend

Compensation and Benefits Committees

Neil McElroy, *Chairman*
Arleigh A. Burke
William R. Hewlett
Robert G. Page
Louis B. Warren
George B. Young

OFFICERS

Lynn Townsend, *Chairman*
V. E. Boyd, *President*

Vice Presidents

W. S. Blakeslee
B. W. Bogan
L. B. Bornhauser
Rinehart S. Bright
P. N. Buckminster
E. A. Caliero
Harry E. Chesebrough
A. N. Cole
Walter B. Connolly
E. P. Engel
John Ford
F. M. Glassford
Charles B. Gorey, Jr.
Erwin H. Graham
A. W. Hartig
Georges Hereil
David W. Kendall
Joseph F. Kerigan
Tom Killefer
John D. Leary
Alan G. Loofbourow
Robert B. McCurry, Jr.
I. J. Minett
T. F. Morrow
Byron J. Nichols
William M. O'Brien
F. Osann, Jr.
John J. Riccardo
E. H. Rydholm
S. L. Terry
Glenn E. White
Roger J. Helder, *Comptroller*
Walter J. Simons, *Treasurer*
A. S. Bond, Jr., *Secretary*

Counsel

Kelley Drye Newhall Maginnes & Warren, *New York*

Auditors

Touche, Ross, Bailey & Smart, *Detroit*

Transfer Agents

Manufacturers Hanover Trust Company, *New York*
The First National Bank of Chicago, *Chicago*
National Bank of Detroit, *Detroit*
Montreal Trust Company, *Montreal and Toronto*

Registrars

The Chase Manhattan Bank, *New York*
Continental Illinois National Bank and
Trust Company of Chicago, *Chicago*
The Detroit Bank and Trust Company, *Detroit*
The Royal Trust Company, *Montreal and Toronto*

Stock Exchanges

New York	Toronto
Midwest	Paris
Detroit	London
Philadelphia	Geneva
Pacific Coast	Basel
Honolulu	Zurich
Montreal	

*Shareholders' comments and questions
about the company or its products
are welcome, and may be addressed to
the Director of Investor Relations,
Chrysler Corporation, P. O. Box 1919,
Detroit, Michigan 48231.*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SILVER CHRYSLER PLYMOUTH, INC.,

Plaintiff,

-against-

CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION,

Defendants.

COPY RECEIVED

Kelley Drye Warren Clark Carr & Ellis

BY *JW* Postmarked 10/8/73

OCT 9 1973 *JW*

ATTYS FOR

73 C 853

(Weinstein, J.)

AFFIDAVIT

ENTERED

Diary

Register

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

DALE A. SCHREIBER, being duly sworn, deposes and says:

1. I am a member of the firm of Hammond & Schreiber, attorneys for plaintiff Silver Chrysler Plymouth, Inc. in this action. This affidavit is submitted, with leave of Court granted at oral argument on September 18, 1973, in response to the reply affidavit of Robert Ehrenbard, Esq., sworn to September 17, 1973 ("second Ehrenbard affidavit"), supporting the motions of defendant Chrysler Motors Corporation and Chrysler Realty Corporation (both, together with other Chrysler corporations, hereinafter "Chrysler") to dismiss the complaint on the ground that plaintiff's counsel is allegedly disqualified to act for plaintiff in this action.

2. As I believe was recognized in oral argument, Chrysler's motion, viewing its impressionistic and inexact version of my role at Kelley Drye in its favor, raises serious questions of public policy and the administration of justice and calls for a balancing of conflicting social interests. However, I do not believe that, despite a second opportunity, Chrysler has made, or should at this point be permitted to make, a proper evidentiary record to support its version.

3. While disagreeing with much of the second Ehrenbard affidavit, I believe that, to some extent, it begins to define the dimensions of Chrysler's position on this motion. At pages 30 and 31, Mr. Ehrenbard states that, as he sees it, my firm is disqualified to act as counsel for plaintiff in this case, because I allegedly worked on matters involving "a broad spectrum of Chrysler interests" while employed at the Kelley Drye firm. Whatever the meaning of the phrase "broad spectrum of Chrysler interests" -- it cannot be very precise, Chrysler's contention is wrong (1) as a matter of fact and (2) as a matter of law, as will be shown below.

(1) Chrysler's factual premise -- that I worked on matters involving a "broad spectrum of Chrysler interests" -- is incorrect. In fact, as shown in my first affidavit, this affidavit and those of former Kelley Drye associates, I worked professionally on a handful of Chrysler cases, and, in depth, on only two meaningful cases (Checker and Ezzes). My alleged contacts with other Chrysler cases, if any, were remote and on many occasions probably involved such non-professional chores as adjourning motions for partners and senior associates in the firm. I submit that Chrysler cannot establish its factual premise without a full and complete analysis of my time records at Kelley Drye^{*/}. Only such an analysis can possibly resolve the conflicting claims on the present record, about the precise nature of my role at Kelley Drye with respect to Chrysler. Several pertinent inquiries suggest themselves, without an examination of these records:

^{*/} Mr. Ehrenbard cannot be serious in urging that such an analysis of my time records will disclose client confidences (p. 4, footnote). Such an analysis is the only check on the loose use of language and the self-serving references to fragments of evidence that have characterized Chrysler's papers on this motion.

(a) What was the aggregate recorded time reflected on my time records for all clients during my entire tenure at Kelley Drye?

(b) What is the breakdown of the aggregate time figure referred to in (a) above on an annual or other periodic basis?

(c) How much of the aggregate time figure referred to in (b) above for each such period was charged to Chrysler?

(d) How much of the aggregate time figure referred to in (b) above for each such period was charged to other substantial undertakings for non-Chrysler clients such as the Holmes Electric Protection companies in the central station protection treble damage cases, or to the client in the F & C case to which I must have devoted most of my last several months at Kelley Drye? How does the time charged to such clients for such periods compare with the time charged to Chrysler then?

(e) Of the time charged to Chrysler in each period referred to in (b) above, how much was devoted either to the Checker case or the Ezzes case, which were concededly my major Chrysler undertakings at Kelley Drye?

(f) How much time was charged to each of the so-called "dealer" cases and "real estate" cases that I allegedly "worked on"?

(g) What were the matters and issues worked on, as shown on the time sheets?

Only answers to these questions and others can supply the hard evidence that is lacking and that is necessary to prove the broad

factual premise underlying Chrysler's motion.^{*/} Indeed, it would be most surprising if the Kelley Drye firm has not already made precisely such an analysis -- it has an accounting department and other facilities to do it, as Chrysler also undoubtedly does -- but presumably has concluded that disclosure of the results would undermine its position. I do remember that at salary time I was told that my time records had been carefully analyzed as an important part of the firm's evaluation of my performance.

(2) Even accepting Chrysler's factual premise, such a showing -- especially in the context of the present case of a young associate who for less than three years was employed at one of the country's largest law firms, which represented some of the nation's very largest industrial corporations -- cannot give rise to disqualification in absence of a showing of a substantial relationship between my prior work at Kelley Drye and the present case (Plaintiffs' Memorandum in Opposition, pp. 18-20).

4. The likelihood of the use of confidential information -- indeed the possibility of its existence -- in this case can only arise where there is hard proof, utterly lacking here, of such a substantial connection between my work at Kelley Drye and the present case. Absent such a showing, there is no basis for presuming any use of confidential information in this action. I submit that no public interest is served, and many public interests are disserved, if Chrysler, the nation's fifth largest industrial

^{*/} So that plaintiff's position is clear on this matter, I submit that, in the absence of such proof, Chrysler has failed to establish a prima facie case or, at least, that the Court, in the exercise of its discretion, may find Chrysler's failure to submit such proof, on the basis of the entire record on this motion, constitutes a sufficient basis for denying its motion. In any event, before Chrysler is entitled to rely on any information allegedly revealed in the time sheets, all of my time sheets should be produced for inspection and copying.

corporation on Fortune's most recent list of the nation's 500 largest industrial corporations, can deny those with grievances against it their choice of counsel, in the circumstances of this case, especially in view of its obvious ulterior motive of attempting to eliminate Mr. Hammond, an experienced and successful dealer lawyer, from representing Chrysler dealers who comprise about 20% of all domestic automobile dealers in the nation.

The Alleged Substantially Related Matters

5. Apparently realizing the need to show a substantial relationship between the matters that I worked on at Kelley Drye and the present case, Mr. Ehrenbard's second affidavit (p. 5) claims that I "worked on dealer cases and real estate matters -- the very issues presented by the instant case." This suggestive non sequitur -- if I allegedly worked on a "real estate" case of a "dealer" case, such "case" necessarily presented the same "issues" presented in this case -- exposes the low caliber of Chrysler's factual showing. The fact is, as I will demonstrate in detail below, that, with one minor and insignificant exception already disclosed in my original affidavit, (1) I did not read the files, interview witnesses or client personnel, or participate in the drafting of papers in any of these cases nor (2) did those cases, which were handled by other attorneys in Kelley Drye's large litigation department, raise any of the issues raised in the present case.

6. But before dealing with these cases, I must point out the fragmentary, biased and studiously unobjective approach that Chrysler has used in describing my alleged role in these cases. Using such abstract and imprecise terms as "worked on", "involved", or "his participation", Chrysler has failed completely to state (a) the amount of time I spent on each such case, (b) what my alleged "work"

or "involvement" consisted of, and (c) whether my alleged work was minor as compared to that of the senior associates and partners who had principal responsibility for the matter. I know that at least one or possibly two of these cases, my alleged "work" consisted of adjourning a proceeding for the attorney handling the case. I assume that much of my alleged "work" was based on minor entries on time sheets and elevated, by unfair use of characterization in Chrysler's present motion, to the impression of intense involvement. I submit that the very ethical precepts Chrysler ostensibly desires to enforce by this motion are debased by such tactics.

So-Called "Real Estate" Cases

7. Since the present case involved a lease of a Chrysler-owned dealership facility, Chrysler argues that the present case is a "real estate" case and that therefore Chrysler may show a substantial connection between my previous work and the present case by referring to any "real estate" case that I allegedly worked on while at Kelley Drye. The fallacy of this contention is shown by the cases Chrysler has relied upon.

(a) Chrysler v. Estree: The changed description of this case in the second Ehrenbard affidavit (p. 22) as compared with that in the first Ehrenbard affidavit (p. 6) -- after reading the affidavit of Hugh M. Baum, Esq., the former Kelley Drye associate who spent many hundreds of hours on that case, submitted by plaintiff -- discloses the level of tactics employed by Chrysler on this motion. Although Mr. Ehrenbard persists in claiming I was "involved" (p. 6) in this case, he does not state what I did, how much time I spent, or indeed whether I ever read the file. What probably happened with respect to this case was that Mr. Baum may have asked me a question, in a vacuum, and said that I should charge

the time to the Estree case on my time sheet.

(b) Polk v. Cross & Brown: Chrysler's reference to the second and final Chrysler "real estate" matter that I allegedly "worked on" must represent the low point in its attempt to contrive facts. Chrysler was not even a party to this case. In this case, the endorsed complaint in the Civil Court, brought by The Legal Aid Society, seeks \$1,300 for the plaintiff, who claims to have been wrongfully evicted from an apartment at 952 Eighth Avenue, New York, New York. As part of my efforts to obtain data for this motion, I spoke to Steven J. Stein, Esq.,^{*/} a former Kelley Drye associate now with the firm of Proskauer Rose Goetz & Mendelsohn. He stated that while at Kelley Drye he worked under the supervision of William S. Keating, Esq., then a senior real estate associate at Kelley Drye, on the defense of landlord harassment and related matters with respect to the Circle Hotel, which apparently was then owned by Chrysler-Manhattan, a Chrysler subsidiary. While he was not sure of his precise involvement in the Polk case, he stated that he believed that the plaintiff was a welfare client who had resided at the Circle Hotel on Eighth Avenue and claimed that he had been fraudulently induced by Cross & Brown, the managing agent, into leaving the hotel. Mr. Stein stated that he did not remember my being involved in this case or any other Circle Hotel matter. My only hazy recollection is that I was sent down to adjourn a motion or hearing on this case.

So-Called "Dealer Cases"

8. Chrysler's efforts to show my involvement in "dealer

^{*/} Mr. Stein has stated to me that he would be happy to submit an affidavit, if it were necessary.

cases" compares with its showing on "real estate" cases.

(a) Bayside v. Chrysler: Of this case, apparently brought in 1961 long before I joined Kelley Drye, I have not the faintest recollection. I am quite sure that I never read the complaint (until I examined the copy submitted with the second Ehrenbard affidavit) or any papers in the file. It is possible that I either adjourned a motion on this case or went to Court to call "ready" on a motion in the old motion part in the Southern District. Again, Chrysler has failed to specify what my alleged "involvement" was and how much time, either absolutely or in relation to others, I allegedly spent on this matter.

(b) Long Island Motors, Inc. v. Chrysler: My non-involvement in this case had been previously explained, both in Mr. Gurney's affidavit and my previous affidavit (pp. 11, 14). While in his second affidavit Mr. Ehrenbard persists in his inaccurate characterization of my alleged "involvement" in that case, he fails, once again, to give any particulars. This failure of proof cannot be dismissed, as Mr. Ehrenbard attempts to do, as "totally irrelevant" (pp. 5-6).

(c) Rocco Motors v. Chrysler: Despite the contrary contention in the second Ehrenbard affidavit (p. 20), my initial affidavit and that of Mr. Gurney fully disclosed the nature and extent of my work on this case. As Mr. Gurney stated (p. 2), I wrote a research memorandum for a motion made in this case to dismiss under the statute of limitations. After receiving my memorandum, Mr. Gurney drafted motion papers. I may have seen a draft of the limited portion of the supporting legal memorandum dealing with the statute of limitations. Apart from my limited participation in this single dealership case, what is particularly important here is that the case dealt with Chrysler's discontinuance of the DeSoto

in 1960 -- 13 years ago -- and could not possibly be relevant to this case in any manner.

(d) Other Dealer Cases: Unable to show that I participated meaningfully in any Chrysler "dealer" case, Chrysler then, using six pages of the second Ehrenbard affidavit and about one inch of exhibits, notes that the Kelley Drye firm was involved in other cases to which automobile dealers were a party during my tenure. It is not claimed that my time sheets showed one minute of time spent on any of these cases. Mr. Ehrenbard assumes that by some osmotic process I learned about confidential matters, or not so confidential matters, on these cases. However, this assumption is wrong and completely unsubstantiated. If anything, Mr. Ehrenbard's reference to the many cases handled by Kelley Drye in which I admittedly had no involvement indicates that the Kelley Drye firm was a large institution and that even the approximately fifteen-man litigation department was compartmentalized when it came to specific litigated matters.

The Alleged Hammond-Schreiber Collaboration

9. Mr. Ehrenbard in his second affidavit, after completely omitting the subject in his first affidavit, attempts to overcome the complete absence of any relationship between my work at Kelley Drye and the present case by referring to the fact that before Mr. Hammond invited me to form the firm of Hammond & Schreiber in August 1970, Mr. Hammond was designated as "of counsel" to me in an action filed on December 5, 1969 in the United States District Court for the Southern District of New York entitled Pearlman et al. v. Markin et al. Apart from Mr. Ehrenbard's failure to mention this case in his first affidavit, any reluctance that I might have to mention it stems primarily from my desire not to relate

circumstances that I believe might embarrass Mr. Ehrenbard or Chrysler any further than required to meet the issues raised on this motion.

10. I had intended to represent the plaintiff in the Pearlman case alone. After meeting Mr. Hammond in November 1969 -- under circumstances that were related previously in Mr. Gurney's affidavit (p. 3) -- I asked Mr. Hammond if he would act "of counsel" in this case. Our purpose was clear and completely lacking in the malignant motivation that Chrysler would impute to it. We merely wanted to determine if we could work well together. This is the only matter that we worked on prior to the formation of our firm in August 1970. During the entire time, my offices were in White Plains and I did 95% of the work on the case.

11. Mr. Ehrenbard attempts to make something of the fact that the stipulation of discontinuance in the Long Island Motors case was filed on November 28, 1969, while the Pearlman complaint was filed on December 5, 1969. However, the fact is, according to Mr. Hammond, that the Long Island Motors case had been settled in principle long before November 28th and it took until that date to implement all aspects of the settlement.

12. Although Mr. Ehrenbard carefully steers clear of his personal role in the Pearlman case (p. 16), the fact is that he and I on more than one occasion discussed the relationship of the position taken by Checker in the Chrysler case and the Pearlman case. Indeed, on October 14, 1970, Mr. Ehrenbard put at my disposal Chrysler's suitpapers in the Checker v. Chrysler at Kelley Drye's office for about seven and one-half hours. After I completed my examination of these documents, I conferred with Mr. Ehrenbard in his office. Among other things, he stated to me that he could not see any dangers for Chrysler in our cooperation because we had

limited ourselves to exchanging documents on the public record. He then did not object to my having represented the plaintiff in the Pearlman action. Mr. Ehrenbard then agreed to copy a portion of the suitpapers in the Chrysler case that I desired and I left with him relevant suitpapers in the Pearlman case. The next day, a messenger from Kelley Drye arrived at our firm with the copies that I had requested and the suitpapers in the Pearlman case that I had left with Mr. Ehrenbard. Indeed, my subsequent inspection of the public files in the Chrysler case indicated that Mr. Ehrenbard's signature appears on a request for production of documents seeking the very documents from Checker that I had shown him as being exhibits to answers to interrogatories in the Pearlman action and that he had presumably copied before returning them to me.

13. I believe that, until his clients' self-interest dictated otherwise, Mr. Ehrenbard saw no impropriety in my or Mr. Hammond's role in the Pearlman case. Apart from our cooperation as noted above, after the formation of the firm of Hammond & Schreiber (an announcement of which was sent to Mr. Ehrenbard and other Kelley Drye partners and associates) and after the commencement of the Pearlman action, I was invited to two major Kelley Drye social functions, one of which was a testimonial dinner for John W. Drye, Jr., Esq., Kelley Drye's senior partner, commemorating his fifty years with the firm.

14. In July 1972, almost two years after my conference with Mr. Ehrenbard, as counsel in the Pearlman case, we served subpoenas on General Motors Corp., Ford Motor Company, and Chrysler Corporation. General Motors and Ford gave us the information desired; on eve of trial, Chrysler resisted, asserting my alleged disqualification. Because the pressure of trial did not permit us to press the matter and since Ford and General Motors supplied the

information that was basically required, no motion was made against Chrysler. However, Mr. Hammond wrote a letter to Mr. Ehrenbard denying the asserted basis for disqualification and calling his attention to, among other things, his cooperation with me. Mr. Ehrenbard never responded to this letter.

15. The claim that I used Chrysler's confidential information in the Pearlman suit is ridiculous. This suit was not against Chrysler, but against a party who had sued Chrysler. The suit was based primarily on what appeared in Checker's annual reports and SEC statements. Incidentally, the plaintiffs (others intervened after the action was commenced) received a judgment based, not on the claims mentioned in the Ehrenbard affidavit, but on prices at which taxicab sales were made by Checker to a related company in which its management had an interest.

16. It appears to me that Mr. Ehrenbard's desire to mention the Pearlman case -- which is the principal new element added (aside from argument) in his thirty-three page reply affidavit -- shows what high priority he (and presumably Chrysler) place on disqualifying Mr. Hammond from representing Chrysler dealers. The present case is small, and, as seen, wholly unrelated to my work at Kelley Drye. The many hundred man hours that have been spent by Chrysler on this motion belies Mr. Ehrenbard's claim that Chrysler's "motive of seeking in fact to disqualify not Mr. Schreiber but rather his partner Mr. Hammond***is totally incorrect" (p. 31). The transparency of Chrysler's motive shines lustroously through its reply brief where it states hypothetically that "if Mr. Hammond were now to leave his partnership with Mr. Schreiber and form a new firm with somebody else, that new firm would only be rebuttably presumed to be using confidential information in any suit against Chrysler brought to it after dissolution of the old partnership**** (p. 19).

17. Mr. Ehrenbard's ready willingness to condemn Mr. Hammond for inviting me to join him in partnership in August 1970 is wide of the mark. It is premised primarily on his contention, no doubt formulated with a view to his desire to further his clients' interests, of my obligations and the nature of my role at Kelley Drye. Mr. Hammond's knowledge of my role came from me and, if Mr. Ehrenbard desires to point fingers, he should point at me. But the fact remains that despite the deluge of papers offered by Chrysler on this motion, Mr. Ehrenbard has shown very little hard proof to contradict my account of my role at Kelley Drye. Indeed, despite his efforts to discredit the former Kelley Drye associates who submitted affidavits on my behalf in this action -- both of whom have nothing to gain from misdescribing my role, the affidavits of these associates supplies third party perspective on our differences. Mr. Ehrenbard's contention -- and a large portion of his affidavit is merely a discussion of his opinions and his notions about "irrebuttable presumption" built upon "irrebuttable presumption" -- is colored both by his perspective as a partner in a large firm and his client's self-interest.

The Kelley Drye Firm and
My Activities There

18. Having failed to show any meaningful connection between my work at Kelley Drye and the present case and then having tried a smear tactic, which ignores his own role, with respect to the Pearlman case, Mr. Ehrenbard finally attempts to rest his factual case on an extremely inflated notion of my alleged role at Kelley Drye -- apart from my alleged involvement in specific cases.

19. The second Ehrenbard affidavit, I believe, does not reflect the atmosphere inside of a litigation department of a large firm such as Kelley Drye -- at least from the view of a young asso-

ciate. A couple of examples cited by Mr. Ehrenbard suffice. He states that I was in charge of what was fondly called the "litigation library". This consisted of less than a file drawer of legal memoranda and forms on procedural points, such as jurisdiction and venue. I received the honor of being in charge of this matter because, along with one other associate in my room, there were a few empty file cabinets -- one drawer of which could be used to file legal memoranda on procedural points. Mr. Ehrenbard's suggestion that my custodial functions required me to pore over the briefs put in this file drawer is fanciful and inconsistent with the other extensive activities that he attempts to involve me in (p. 10). Mr. Ehrenbard also refers to the occasional luncheon meetings of the litigation department at which specific cases were not generally discussed. The very existence of such meetings shows the diffuse nature of a large firm's litigation department.*

20. Retreating from the contention made in his initial affidavit that I had "daily contacts with defendants' employees" (p. 6), Mr. Ehrenbard contends that, after all, I did speak to a few Chrysler employees (pp. 7-8). However, the few examples that he cites in reply are quite exhaustive and were probably the result of hundreds of man hours spent culling through my time sheets and correspondence files in cases I worked on.**/ Although Mr. Ehrenbard

*/ Mr. Ehrenbard's suggestion that I spent a good deal of time talking to others in the office about their cases without recording the time spent ignores what he well knows about my work habits. I had very little time, as a total analysis of my time records will indicate, to indulge in idle conversation.

**/ In holding that orders denying motions to disqualify counsel (even where, as here, accompanied by a request for injunctive relief against further representation by counsel) are not applicable, Judge Clark, in Fleisher v. Phillips, 264 F.2d 515, (2d Cir.) cert. denied, 359 U.S. 1002 (1958) noted the danger that disqualification motion can lead to "wasteful appeal[s] where the original issues are altogether lost." See also, Marco v. Dulles, 268 F.2d 192 (2d Cir. 1959).

spends almost an entire page referring to my contacts with Messrs. Rose, Ferris and Glenn, he does not relate the facts that would demonstrate their true significance. Messrs. Ferris and Glenn I met once. I was asked to accompany them on an appointment with a procurement department official of New York City to listen to the reasons why Chrysler lost a bid to sell automobiles to New York City. I was briefed in the taxicab on the way down to the Municipal Building. After a brief meeting the matter was closed. My contacts with Mr. Rose, a sales official at Chrysler-Manhattan,^{*/} principally involved the Abikkarm case -- a Civil Court case based on breach of a new car warranty (my first affidavit, p. 10). My principal contacts with him entailed reviewing the repair history of the plaintiff's vehicle. I also dealt with Mr. Anderson on this case only by telephone.

21. With respect to my contacts with Mr. Kendall and Mr. Philip, they were all in connection with the Ezzes case and Mr. Ehrenbard does not claim otherwise. As my first affidavit makes clear (p. 10), my participation in this case was necessarily limited, although I spent many hours on it. My access to files at Kelley Drye on the case principally involved review of suitpapers in a previous case, which defendants proved were res adjudicata on the issues raised.

22. With respect to Mr. Huth, I never met him, but spoke with him by telephone in connection with Checker v. Chrysler.

23. Finally, Mr. Ehrenbard takes issue with my view that confidential information was withheld from associates. I can

^{*/} To my utter amazement, Mr. Ehrenbard claims that I worked on the incorporation of Chrysler-Manhattan (p. 22). This assertion is wrong and totally absurd; it continues to demonstrate little regard to niceties of the high ethical concerns professed by defendants on this motion.

remember at least four specific instances in which this occurred and would, if requested, testify under oath about particulars. This notion is not contradicted by Mr. Ehrenbard's assertion that there was discussion between him and associates about the legal theories on specific litigated matters. Such discussion is not the imparting of confidential information; but rather the training of young lawyers upon which no firm, or lawyer, however able (as Mr. Ehrenbard clearly is), can claim a monopoly. The point is that at all times both partners of the firm, and clients as well, weigh the desirability of divulging information to associates. There appeared to me to be a keen appreciation at Kelley Drye that the high turnover of young lawyers necessitated certain precautions in this regard.

24. Looking backwards from the perspective of Chrysler's position on this motion, I wonder whether young law school graduates, thinking of temporary association at large firms, can possibly conceive of the hazards of their prospective employment. If young lawyers, after departing from large firms such as Kelley Drye, and the firms they are later connected with are disqualified upon the showing made here by Chrysler, they ought to be amply forewarned. The consequences of adequate notice would only aggravate the present problems large firms have in hiring young lawyers; and in any event, would enshroud young associates with inhibitions about talking with anyone at the firm or their clients.

The Saab Case

25. Chrysler has attached to its reply brief the affidavit of the plaintiff's counsel in the Saab case, attempting to negative the assertion made in plaintiff's brief that the plaintiff's counsel there failed to deny frontally important allegations about his prior

representation of defendants and related entities. I attached hereto the defendants' affidavit in that case. I believe that a few excerpts therefrom will show that plaintiff's distinguishing of that case was fully justifiable. Paragraphs 7 and 8 of Millet affidavit state:

"7. Among other things, Mr. Musnkin drafted the first form of dealer agreement used by Saab Motors, Inc. He also assisted in preparing forms of trust receipt agreements used by Saab Motors, Inc. in its relations with its dealers. In addition, he helped draft a warranty contract used in connection with the sale of Saab automobiles.

"8. Over the years, Mr. Mushkin was called upon frequently by executives of Saab Motors, Inc. to render legal advice and assistance on a variety of matters, including, among other things, agreements, relations with Saab dealers, air pollution laws and regulations, fair trade laws and related questions, customer complaints, dealer complaints, and the like. He was Saab Motors, Inc.'s lawyer, on a retainer, and he was consulted frequently in this capacity."

The disqualified counsel did not deny any of the claims made in paragraph 7. His response to paragraph 8 consisted of his statement that he received a \$50 monthly retainer, not from defendant Saab Motors, Inc., but another Saab company, Saab Overseas, Inc. (See attached affidavit of Robert H. Wehman.)

26. Chrysler cannot make a meaningful comparison between my role, as a young associate at Kelley Drye for less than three years, working on a limited number of litigation matters, and the plaintiff counsel's role in the Saab case as general counsel, who drafted the basic Saab dealer agreement, and represented several Saab companies over twelve years. By virtue of his drafting the Saab dealer agreement, counsel in the Saab case must have had access to information about all facets of Saab's relationship with its dealers and admittedly dealt with top company executives. I submit that the dissimilarity of roles is so significant as to put Chrysler's motion into true perspective.

Conclusion

27. Disqualification, in a case such as this, should rest upon the existence -- not proved here -- of a meaningful connection between the young associate's work at the large firm and his or his new firm's subsequent representation. In absence of such a showing, there is no meaningful concern -- and the law should not be paranoid or assume that the public is paranoid -- about the preservation of presumed confidences. Otherwise, the adverse impact on clients' right to specialized counsel of their choice and the professional opportunities of young lawyers will be unjustifiably heavy.

Dale A. Schreiber

Sworn to before me
this 8th day of October, 1973.

Gerson William Reiff

GERSON WILLIAM REIFF, NOTARY PUBLIC
STATE OF NEW YORK No. 60-6530940
Qualified in Westchester County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
SILVER CHRYSLER PLYMOUTH, INC.,

Plaintiff,

-against-

CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION,

Defendants.
----- x

73 C 853

(Weinstein, J.)

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK)

ss.:

ALEXANDER HAMMOND, being duly sworn, deposes and says:

1. I am a member of the firm of Hammond & Schreiber, attorneys for plaintiff Silver Chrysler Plymouth, Inc. in this action. This affidavit is submitted, with leave of Court granted at oral argument on September 18, 1973, in response to the reply affidavit of Robert Ehrenbard, Esq., sworn to September 17, 1973 ("second Ehrenbard affidavit"), supporting defendants' motion to dismiss the complaint on the ground that plaintiff's counsel is allegedly disqualified to act for plaintiff in this action.

2. Although there is much I disagree with in the second Ehrenbard affidavit, I will, in the interest of not further swelling the voluminous record on this motion, respond directly to one specific point raised therein. Mr. Ehrenbard (pp. 18-19) may have created the impression that I was counsel to the predecessor of IDCDA during what Mr. Ehrenbard calls the "Dodge Dealer Rebellion". I was not. The Long Island Motor case, in which I represented the plaintiff, was based on the discontinuance of the DeSoto car in 1960 and alleged antitrust violations occurring well before 1963.

447 a

Indeed, a careful reading of the second Ehrenbard affidavit indicates that only one action -- the Ace Dodge case -- was brought as part of the so-called "Dodge Dealer Rebellion". If this was a "rebellion", then every peaceful demonstration is a coup d'etat.

Alexander Hammond

Sworn to before me
this 4th day of October, 1973.

David A. Schuler

Notary Public
State of New York
No. 1234567
Qualified in New York City
Commission Expires 12/31/74 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK



-----X
SILVER CHRYSLER PLYMOUTH, INC., :

Plaintiff, :

73 Civ. 853
(Weinstein, J.)

- against - :

CHRYSLER MOTORS CORPORATION and :
CHRYSLER REALTY CORPORATION, :

Defendants. :
-----X

AFFIDAVIT

ENTERED
FILED 10/31/73

STATE OF NEW YORK)

SS.:

COUNTY OF NEW YORK)

Clery

Register

ROBERT EHRENBARD, being duly sworn, deposes and
says:

I am a member of the firm of Kelley Drye Warren Clark Carr & Ellis ("Kelley Drye"), attorneys for the defendants herein. With leave of Court granted at oral argument on September 18, 1973, I submit this affidavit in response to the affidavits of Mr. Schreiber and Mr. Hammond served on October 8, 1973, and in support of defendants' motion to disqualify and enjoin plaintiff's attorneys ("Hammond & Schreiber") from participation in this suit, and to dismiss the complaint because of such disqualification. The purpose of this affidavit is to point out and respond to some of the misstatements in plaintiff's papers, especially with regard to Mr. Schreiber's activities on Chrysler's behalf while he was associated with Kelley Drye, and his subsequent affiliation with Mr. Hammond.

Scope of Mr. Schreiber's Activities for Chrysler at Kelley Drye

Throughout his affidavit, Mr. Schreiber repeatedly assumes that his work for Chrysler was limited to those few cases which I mentioned in my reply affidavit. That is totally incorrect, however. First of all, I mentioned only some of the prominent Chrysler litigations on which he worked, and attached only certain pleadings, but not the clients' files or attorney work product. There are many other litigation cases that were not mentioned so as to avoid burdening the Court with an even greater volume of papers on this motion. Among the cases not specified, for example, were the numerous warranty cases which Mr. Schreiber concedes he handled (page 15 of his prior affidavit), cases in which Chrysler and its dealers often have adverse interests (see page 24 of my reply affidavit). Further, Mr. Schreiber worked on many confidential Chrysler problems, matters that were not in litigation and often involved giving advice or assistance to Chrysler or preparing for possible transactions or litigations. In my reply affidavit, I declined to discuss or produce the files from the many non-litigation Chrysler matters on which Mr. Schreiber worked -- lest we be forced on this motion to reveal the very Chrysler confidences sought to be preserved. The courts have repeatedly held such revelation to be both unnecessary and undesirable (page 7 of defendants' memorandum, and pages 8 and 9 of defendants' reply memorandum). Accordingly, the

public documents attached to my reply affidavit would indicate -- at the very most -- the tip of the iceberg of confidential information to which Mr. Schreiber had access during his years with my firm. Indeed, Mr. Schreiber even conceded at oral argument of this motion that he had confidential information about Chrysler, and regrettably spoke disparagingly of it.

While Mr. Schreiber accuses me of using language freely, the fact is that it is he who has been too facile and evasive with his expressions.* Thus, on page 2 of his affidavit, he claims that he "worked professionally on a handful of Chrysler cases, and, in depth, on only two meaningful cases." (emphasis supplied). The distinction between a meaningful and a non-meaningful case totally eludes me, and indeed no such distinction has been either drawn or recognized by the cases cited in plaintiff's memorandum. As I mentioned in my reply affidavit, an attorney cannot represent a client only half-heartedly; all aspects of representation are therefore meaningful. Mr. Schreiber's use of the term "meaningful" can hardly obscure the obvious fact that confidential information would have passed to him through any or all of the Chrysler matters on which he worked, however he may choose to characterize those matters.

* As noted at pages 12-13 of my reply affidavit, he has attempted to mislead this Court on the nature of his law practice in White Plains and the origin of his collaboration with Mr. Hammond.

The expression "professionally" used by Mr. Schreiber is equally deceptive. Mr. Schreiber seeks to create the impression that he performed certain functions in court as an unthinking messenger, without having the slightest knowledge or understanding of the cases involved. That is not, however, an accurate picture, especially for a thorough and conscientious attorney such as we expected Mr. Schreiber to be. It is apparent that, in accordance with this firm's procedures, he must have familiarized himself with the cases at least enough to be able to perform the court tasks at hand -- and to fully represent Chrysler in the event any request for an adjournment was denied, which does occur from time to time. Moreover, his time and responsibilities were seldom devoted to such court appearances, but were expected to be devoted to the legal work for which Mr. Schreiber was paid a salary that was higher than many attorneys even with more years of experience earned. Furthermore, even an attorney who receives no compensation for his services is not at liberty to so disparage his services or his client as to free himself of either his professional or ethical duties.

On pages 2-4 of his affidavit, Mr. Schreiber contends that Chrysler must make his time records available before the Court may disqualify his firm. It is not clear what the basis of his position is, but as I already indicated in my reply affidavit, disclosure of the records would only permit him to reinforce and update his confidential information, by refreshing his recollection of specific contacts

with Chrysler personnel and the contents of any communications with them, and of the numerous Chrysler matters on which he worked. The thorough analysis of time records which Mr. Schreiber demands of Kelley Drye would be very expensive and time-consuming to prepare, and so burdensome that we do not believe we are required to comply. Indeed it is quite evident that Mr. Schreiber would not be satisfied with anything less than the revelation of the very work he performed and the disclosure of all the documentary evidence of the confidences he obtained. No client should be required to disclose that at the pain of his former attorney acting as an adversary. Contrary to Mr. Schreiber's claim, on page 4 of his affidavit, this firm has not already made the detailed analysis proposed. Further, the analysis would either relate irrelevant matter or reveal the confidences of Chrysler and other clients. It should not matter what other confidences he also obtained from other clients and as to other matters. In any event, there can be no doubt that Mr. Schreiber was broadly exposed to Chrysler confidences and no more need be shown.

Mr. Schreiber denies having had any exposure to Kelley Drye matters other than those to which he was assigned (page 9 of his affidavit), and in the first footnote on page 14 he suggests that he "had very little time... to indulge in idle conversation." His contention, however, must be rejected not only because of the irrebuttable legal presumption that attorneys in the same firm share client confidences with one another (see pages 11-14 of defendants'

initial memorandum), but also because his denial is factually incredible. Attorneys in this firm, associates and partners alike, do discuss their cases with one another, both in and out of the office. As a conscientious attorney, Mr. Schreiber must have discussed with attorneys in the firm other Chrysler cases which may have appeared to be related or applicable to matters in which he was involved. In addition, attorneys are always discussing their work casually, at meetings of the litigation department, lunch or social encounters, and even Mr. Schreiber, during his years of work with this firm, must have engaged in such conversations -- whether they be deemed "idle" or otherwise. Indeed, it is apparent that he must have had such discussions with his friend Mr. Gurney, whom he has described as the principal Kelley Drye associate during his tenure handling Chrysler dealer litigations. Neither Mr. Schreiber, nor Mr. Gurney have undertaken to describe all the discussions they had concerning Chrysler matters. Indeed, I do not think they could hope to relate all those conversations during the years they have known each other. Nor could they properly do so because it would in and of itself be a breach of ethics and cause the client the very kind of harm it here seeks to avoid. As long as I have been with this firm discussions among attorneys in the office of the confidential aspects of Chrysler work in process or done previously have taken place and I myself have had many of them with Mr. Schreiber.

Mr. Schreiber's recognition of the free exchange of information and advice among Kelley Drye attorneys with respect to Chrysler matters is illustrated by his statement

(pages 6-7 of his affidavit) that Mr. Baum may have asked for his assistance in connection with the Estree case, a statement which is echoed in Mr. Baum's affidavit. Similarly, Mr. Gurney, in his affidavit, states that he asked for Mr. Schreiber's assistance in the DiCarlo case, and may have discussed the Buono case with him. Indeed, Mr. Schreiber's statement, on page 16 of his affidavit, that young lawyers if forewarned would avoid talking to fellow attorneys or to clients, further suggests that Mr. Schreiber himself did engage in such discussions. It is thus obvious that Mr. Schreiber discussed Chrysler cases with his fellow attorneys, and his implied contention to the contrary is without foundation.

Mr. Schreiber refers to the size of this firm's litigation department during the years of his association (pages 9 and 14 of his affidavit). In fact, the department had, at that time, three partners and no more than nine associates, and was accordingly smaller than he has claimed. The department was not at all compartmentalized. While not every attorney worked on each matter, there was a steady flow of information about the different matters being handled by the department, and the attorneys were generally aware of matters being handled by others -- both specific cases and broad litigation trends, such as Chrysler dealer litigations and the Dodge Dealer Rebellion discussed at pages 17-19 of my reply affidavit.* Such familiarity flowed not only

* Mr. Hammond's allegation that only one case was brought as part of that Rebellion is dubious at best. First of all, the cases mentioned in my reply affidavit were only some of those defended by Kelley Drye, whereas other cases were handled by different firms. In addition, it is difficult to tell which of the dealer cases brought subsequent to October 1966 were part of the Rebellion and which were not. Mr. Hammond's claim to know that answer may well reflect his own familiarity and affiliation with the Rebellion.

from work-related or casual discussions, but also from the litigation luncheon meetings (noted on page 14 of Mr. Schreiber's affidavit), at which specific cases, problems, and trends were openly considered. The existence of those meetings shows the closeness and openness rather than the allegedly diffuse nature of the litigation department.

On page 15 of his affidavit, Mr. Schreiber discusses briefly some of his contacts with Chrysler employees, referring to the brief description of certain contacts (hardly an exhaustive list) in my reply affidavit. Mr. Schreiber now concedes having had contacts with Messrs. Rose, Ferris, Glenn, former Chrysler Vice-President in charge of legal affairs Mr. Kendall, and Chrysler attorneys Anderson, Huth and Philp. While Mr. Schreiber suggests that he spoke with Mr. Rose and Mr. Anderson only about the Abikkaram case, I find that in fact their contacts related to other matters as well. It is also significant that Mr. Schreiber's second affidavit does not deny having had frequent contacts with employees at Chrysler's New York regional office, including representatives in daily touch with dealers, nor does he deny receipt of letters and other materials from Chrysler employees (page 8 of my reply affidavit), or that he may have influenced Chrysler policies during his contacts with Chrysler (page 11 thereof). Mr. Schreiber similarly does not deny that associates were expected to make full use of Chrysler and Kelley Drye files and personnel in developing their cases (page 6 thereof). It is apparent that confidential information is likely to have passed to him during such contacts. While certain discussions with Chrysler personnel may have focused on a specific matter, it is nonetheless possible that other Chrysler matters were discussed as well.

Contrary to Mr. Schreiber's claims, it is evident that he did work on cases involving Chrysler's relations with its dealers. One such case is Rocco Motors Sales Corp. v. Chrysler Motors Corp., described at pages 20-21 of my reply affidavit, with the complaint from that suit attached as part of Exhibit "G" thereto. As the Court will note, that case encompassed a wide range of Chrysler dealer issues, including those related to the dealer's "maintenance, improvement and operation" of its premises (paragraph 8 of the complaint). Mr. Schreiber contends (on page 8 of his affidavit) that his work on Rocco consisted of doing the research for a motion for dismissal pursuant to the statute of limitations, yet it is apparent that he must also have examined the facts of the case and the allegations made by plaintiff; indeed, such an examination was a pre-requisite to any evaluation of the statute of limitations defense. Also significant is the fact that the portions of Chrysler's memoranda dealing with the statute of limitations -- which Mr. Schreiber concedes he may have seen in draft form -- were prominent portions of, and indeed interwoven in and inseparable from the rest of, the memoranda. Yet the memoranda also considered the other issues raised by the case, including the alleged contractual agreement between Chrysler Motors and Rocco, and alleged tortious conduct by Chrysler Motors toward Rocco. Annexed hereto as Exhibits A and B are copies of Chrysler's initial memorandum in support of the motion, and a reply memorandum -- both of which reflect the emphasis

placed by Chrysler on its statute of limitations defense developed by Mr. Schreiber, and the pervasiveness of that argument in Chrysler's papers. As the Court will note, Mr. Schreiber is listed as "of counsel" on the reply memorandum. Contrary to Mr. Schreiber's claim, the fact that Rocco involved a dealer termination occurring years ago is not inconsistent with his having received through that suit both confidential information and an understanding of Chrysler's practices and procedures that could be helpful to him in the present case.

It is also interesting that Mr. Schreiber has not denied my claim that the Checker case involved issues relating to Chrysler's relations with its dealers (page 23 of my reply affidavit), and that his admittedly extensive work on that case may therefore have given him confidential information of such dealer relations that could be helpful to him in the present case.

It is evident that something has obstructed Mr. Schreiber's recollection of some of his other Chrysler work at Kelley Drye. For example, while Mr. Schreiber gives us the benefit of his "hazy recollection" that he may have only sought an adjournment in Polk v. Cross & Brown (page 7 of his affidavit), I find that he drafted the answer in that suit on behalf of Chrysler Manhattan, owner and lessor of the Circle Hotel, and he also worked on other Circle Hotel matters. The reference to Mr. Steven Stein's involvement

may be the result of the fact that there was a prior case of Poke v. Cross & Brown in which Mr. Stein did prepare a motion. Although Mr. Schreiber is correct in that he did not handle any incorporation of Chrysler-Manhattan, he appears to have forgotten his work on the subject of the incorporation of Chrysler-Manhattan (footnote on page 15 of his affidavit), however again we do not believe it should be in his power to compel Chrysler to produce his confidential work product in order to prove it. In this light it must be understood that Mr. Schreiber's affidavit is not accurate, and his assertion on page 5 of his affidavit that he did not read certain Chrysler files must be viewed in the same light.* Like our other attorneys, he had access to all of this firm's files. The only question is which files were available for him to read and I submit that his purported recollection of not having read certain files cannot be accepted as factual. Indeed the whole vice in Mr. Schreiber's contention is that the client would be left at the mercy of his former attorney's recollection, which here is admittedly "hazy", and his veracity, which here has been shown to be faulty in at least some respects.

* Contrary to Mr. Schreiber's claim on page 13, I have made no attempt to discredit Mr. Gurney or Mr. Baum, but merely to point out that both of them are as likely as Mr. Schreiber to have forgotten certain facts, and are in any event unable to state what Mr. Schreiber did not do or learn.

The Hammond-Schreiber Collaboration

On pages 9-13 of his affidavit. Mr. Schreiber addresses himself to my charge that his earlier affidavit has misstated the origins of his collaboration with Mr. Hammond, a collaboration which from its inception freely utilized Chrysler confidences obtained by Mr. Schreiber at Kelley Drye. Mr. Schreiber concedes that he and Mr. Hammond did work together on the Pearlman case, and apparently began their affiliation in November, 1969, probably before Mr. Hammond's Long Island Motors suit against Chrysler was discontinued on November 28th. Contrary to Mr. Schreiber's characterization of Mr. Hammond's view, even the settlement of that suit "in principle" did not occur "long before", but apparently just a few weeks before, November 28, 1969. It follows that Messrs. Hammond and Schreiber acted with undue haste and indiscretion from the time they first agreed to work together and were not candid to this Court in initially describing how their association began.

Mr. Schreiber's lack of understanding of the ethical considerations raised by this motion is emphasized by his vigorous denial, on page 12 of his affidavit, that he used any confidential information from the Checker case in prosecuting Pearlman. Yet he has conceded that he devoted a great deal of time to work on Checker, and has not denied that Checker had many issues in common with Pearlman (see pages 14-16 of my reply affidavit); it must be apparent,

therefore, that confidential information received in Checker is likely to have influenced his allegations, tactics or other activities in Pearlman. Further, as Mr. Schreiber stated at oral argument, it was his work on behalf of Chrysler in the Checker suit that first stimulated his suspicions about Checker. Even more importantly, the Pearlman case was based in part on the difference between Chrysler's and Checker's cost to manufacture taxicabs, which involved confidential information developed and worked on in the Checker case in our office while Mr. Schreiber was with us.

Thus, the Pearlman action clearly arose out of Mr. Schreiber's efforts in prior representation of Chrysler. The fact that Pearlman was not against Chrysler obviously does not negate the conclusion that he acted improperly. In fact, the basis of the Pearlman judgment as stated by Mr. Schreiber, i.e., the prices at which Checker sold taxicabs to related companies, was itself an issue in the Checker suit, on Chrysler's counterclaim alleging that Checker was monopolizing the taxicab market through dealings with related companies and otherwise. (See, for example, paragraphs 11-21, 26, 29 and 31-34 of Chrysler's counterclaim, included in Exhibit "C" to my reply affidavit). Mr. Schreiber's vehement denial of impropriety is therefore totally incredible, and exemplifies his lack of regard for Canon 4 and for the need to preserve both the confidentiality of client disclosures and the appearance of propriety in the conduct of attorneys.

While Mr. Schreiber attempts to show my cooperation in his conduct in Pearlman, his version of the facts is incorrect. My position as to his ethical obligations was made clear to Mr. Schreiber while he was employed by my firm, and I never deviated from it. Even though I was unable to influence his conduct after he left our employ, I never gave Mr. Schreiber any basis for thinking I had changed my views, and I maintained the same position throughout. Chrysler's lack of participation in the Pearlman suit was even conceded by Mr. Schreiber in an April 27, 1970 letter to my firm, in which he termed attempts to connect Chrysler to that action as utterly false. A copy of said letter is annexed hereto as Exhibit "C". Nonetheless, such attempts were made, complicating and making more difficult Chrysler's efforts to reach a settlement in the Checker case. While we did make available to Mr. Schreiber documents that were of public record, we did so as a matter of professional courtesy, and my firm often does so even with our adversaries; no approval of the conduct or ethics of the other attorney is ever implied by making available more conveniently papers to which he would have access in any event. Indeed, our insistence on limiting these contacts to matters of public records shows that difference between the relationship we might have with an attorney with whom we had interests in common or whose activities deserved our assistance.

While Mr. Schreiber claims (on page 10 of his affidavit) to have spoken to me on October 14, 1970, I do not recall any real meeting with him on that date, and in

fact his review of documents would have been handled by an associate of my firm rather than me. At the most, Mr. Schreiber may have stepped into my office for a few minutes. If I did not object on that date to his representation of Pearlman, it was only because I had already made my views known to him and had no doubt that he was completely aware of them. Contrary to Mr. Schreiber's allegation (on page 11 of his affidavit), I did not sign any request for production of documents such as he has described.

It is thus apparent that this firm did not approve of, or cooperate in, Mr. Schreiber's conduct in the Pearlman case. But, in any event, even if such cooperation had existed, that would be no bar to disqualification on the present motion because it was not within our power to approve such conduct. It is only the client that can give such approval.

Further, Mr. Schreiber states that the Pearlman suit against Checker was not antagonistic to Chrysler's interest; if so, then Chrysler was not obligated to raise the disqualification issue at that time; however, when an antagonistic issue did appear -- as it did when Hammond & Schreiber subpoenaed Chrysler's records, and again when that firm filed the complaint herein -- Chrysler promptly asserted the disqualification issue. While Mr. Schreiber claims (on page 12 of his affidavit) that I did not respond

to Mr. Hammond's letter, he neglects to inform this Court that Mr. Hammond's letter was motivated by my prior letter reiterating again the position I had repeatedly taken with Mr. Schreiber as to his ethical responsibilities both with regard to the Pearlman case in particular and Chrysler in general. Strangely, Mr. Schreiber chose not to mention my prior letter. Our response to Mr. Hammond's letter is reflected in our formal objections to the subpoena, for reason of disqualification and otherwise (Exhibit "D" to my reply affidavit). I will not annex this exchange of letters because I do not think it necessary in this motion to decide the questions raised by our objections which Messrs. Hammond and Schreiber elected not to challenge. It follows that there is no inhibition on Chrysler in asserting the disqualification of plaintiff's attorneys.

Perhaps the most significant thing about Mr. Schreiber's discussion of his collaboration with Mr. Hammond is his failure to deny that he has switched sides -- from representing Chrysler during the first several years of the Dodge Dealer Rebellion, to representing the very leaders and participants in that Rebellion at the present time (see pages 17-19 of my reply affidavit).

The Role of Mr. Hammond

On page 13 of his affidavit, Mr. Schreiber attempts to answer our contention that Mr. Hammond should have avoided forming a partnership with a former Kelley Drye associate, as Chrysler was one of his principal adversaries. Yet, the simple fact that Mr. Schreiber had worked for this firm, and had indeed been immersed in work on Chrysler matters, should have been more than enough to deter Mr. Hammond. His decision nonetheless to form a partnership with Mr. Schreiber evidences at the very least an ethical laxity and a disregard for preserving the appearance as well as the fact of propriety. It further raises the question of whether a breach of confidentiality, like in Pearlman, was an intentional purpose of forming the partnership.

On pages 5 and 12 of his affidavit, Mr. Schreiber repeats the charge from plaintiff's earlier papers that Chrysler's true motive is to disqualify not him, but rather his partner Mr. Hammond. As previously, the charge is absolutely without support, and as shown at pages 31-32 of my reply affidavit, totally incorrect. The constant repetition of this inflammatory and totally baseless charge is highly offensive and improper, and should not distract the Court from the fact that Mr. Hammond is hardly indispensable to, or the only attorney available to represent, Chrysler dealers. Indeed, Mr. Hammond has never to my knowledge brought a dealer's suit to trial or obtained a judgment on behalf of a dealer, whereas other attorneys have.

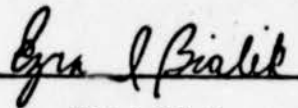
It also appears that the plaintiff has another attorney, Leonard Lustig, Esq., representing it in other litigation with my firm.

Mr. Schreiber closes his affidavit by making light of the doctrines of Canon 4 that client confidences must be protected, and by claiming an "adverse impact on clients' right to specialized counsel". Apparently, Mr. Schreiber and Mr. Hammond believe that these employments of them are more important than the preservation of a former client's confidences and rights. Also overlooked by Mr. Schreiber once again is the Second Circuit's recent holding in Emle Industries that Canon 4 must be strictly enforced by the courts, even against specialized counsel (see discussion at pages 21-23 of defendants' reply memorandum).

It is accordingly respectfully requested that defendants' motion to disqualify and enjoin Hammond & Schreiber, and to dismiss the complaint because of such disqualification, be granted in all respects.


ROBERT EHRENEARD

Sworn to before me this
30th day of October, 1973.



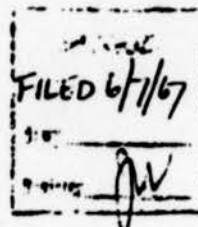
EZRA I. BIALIK
NOTARY PUBLIC
No. 31-331160
Qualified in New York County
Commission Expires March 26, 1974

466 a

Exhibit "A"



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER



-----X
ROCCO MOTOR SALES CORPORATION, :
Plaintiff, :
- against - :
CHRYSLER MOTORS CORPORATION, :
Defendant. :

DEFENDANT'S MEMORANDUM OF LAW

KELLEY DRYE NEWHALL MAGINNES & WARREN
350 PARK AVENUE, NEW YORK 10022
212 PL 2-5800

DEFENDANT'S MEMORANDUM OF LAW

This memorandum is submitted on behalf of defendant, Chrysler Motors Corporation, in support of its motion pursuant to CPLR 3211(a)(7) to dismiss the complaint on the ground that it fails to state a cause of action and that what is stated is barred on its face by the Statute of Limitations; and, additionally, pursuant to 3211(a)(8) and 305(b) of the CPLR on the ground that there has been an insufficiency of process.

The applicable facts and occurrences to date are set forth in the moving affidavit of Clark J. Gurney, Esq., sworn to on the 5th day of June, 1967 and referred to herein. For convenience, defendant's memorandum has been organized into five points, each respectively addressed to the five "causes of action" contained in plaintiff's complaint.

POINT I

PLAINTIFF'S FIRST CAUSE OF ACTION
FAILS TO PROPERLY PLEAD A CLAIM FOR
BREACH OF CONTRACT AND WHAT IS PLEADED
IS BARRED ON THE FACE OF THE COMPLAINT
BY THE STATUTE OF LIMITATIONS

In its first cause of action, plaintiff, a former franchised automobile dealer of defendant, Chrysler Motors Corporation, appears to allege a breach by defendant, of a "Direct Dealer Agreement" with it, in the discontinuance of

production of the DeSoto model automobile "on or about November 18, 1960." (Complaint, Par. 15). The claim appears to be that it was defendant's obligation to forever supply plaintiff with DeSoto model automobiles and its discontinuance on November 18, 1960 was a breach of the "agreement." However, plaintiff, does not as required, set forth this undated "agreement" and its terms, as well as the provisions or provision on which it relies and which it claims defendant breached - the essential elements to properly plead breach of contract. See, Stephans v. Apostol, 17 A.D. 2d 792, 234 N.Y.S. 2d 337 (2d Dept. 1962).

Assuming, however, that plaintiff could properly plead a cause of action for breach of contract, the breach occurred and plaintiff's claim arose, by its own assertion, "on or about November 18, 1960." Such a cause of action, if once possessed, was required to be commenced under the applicable statutory period of limitations within six years from that date. C.P.A. §48(1); CPLR 213(2). Accordingly, since the purported service of the summons in this action did not occur until January 26, 1967, the supposed cause of action is barred on the face of the complaint and, it is submitted, cannot now be maintained.

POINT II

PLAINTIFF'S SECOND CAUSE OF
ACTION FOR "TORTIOUS INTERFERENCE"
DOES NOT STATE A LEGALLY COGNIZABLE
CLAIM AND THAT IS SET ASIDE
BASED ON THE FACE OF THE STATUTE
OF LIMITATIONS

Plaintiff's second cause of action is a restatement of its first, except that it claims in conclusory fashion that the discontinuance of production by defendant (and its unnamed subsidiaries) constitutes a "tortious interference" with its claimed "agreement" and prospective economic advantage thereunder. However, it is settled that "one contracting party does not have a cause of action against the other...for inducing the breach." Cuker v. Crowe Construction Co., 6 A.D. 2d 415, 178 N.Y.S. 2d 777 at p. 779 (1st Dept., 1958); Boro Motors Corp. v. Century Motor Sales Corp., 18 Misc. 2d 1009, 187 N.Y.S. 2d 490, at p. 493 (Sup. Ct., Kings, 1959). Moreover, there are no allegations of "special damages" and the "ultimate facts showing that the injurious action was prompted either solely or primarily by malice," as required for plaintiff's claimed "tort". Wolfe Studebaker Inc. v. Studebaker-Packard Corp., 50 Misc. 2d 226, 270 N.Y.S. 2d 158, at p. 160 (Sup. Ct. Kings, 1966).

However, assuming again that such a cause of action could exist, it would be governed by the three year statutory

period of limitations for such actions. C.P.A. §49(7), CPLR §214(4). Accordingly, this supposed "cause of action" would have been time barred for at least three years prior to the purported service of the summons on January 26, 1967 and cannot now be maintained, See, e.g. Sida v. Thomson, 205 N.Y.S. 2d 240, at p. 241 (and cases collected there) (Sup. Ct., Kings 1960, not otherwise reported); Henrihan v. Parker, 19 Misc. 2d 467, 192 N.Y.S. 2d 2, at p. 4 (Sup. Ct. Kings, 1959).

POINTS III AND IV

PLAINTIFF'S THIRD CAUSE AND FOURTH CAUSES FOR "TORTIOUS INTERFERENCE" FAIL TO STATE CAUSES OF ACTION AND WHAT IS STATED IS BARRED ON ITS FACE BY THE APPLICABLE STATUTE OF LIMITATIONS

Plaintiff's third cause of action also alleges in conclusory form "tortious interference" with plaintiff's "business and prospective economic advantage" by claiming that "some time in 1961" defendant wrote to all DeSoto owners stating that "your Dodge and Chrysler Dealer is best qualified to give your Di Soto [sic] the genuine factory approved service it deserves." (Complaint, Par. 22). The fourth cause appears in all respects the same as the third, with the addition that defendant "participated and encouraged" the sending of the alleged letter "in 1961".

To begin with, no facts or anything else are alleged which show the nature of plaintiff's legal interest that defendant allegedly "interfered" with (Blalock v. Potter, 72 N.Y.S. 2d 372 at p. 376, and cases cited there), (Sup. Ct. 1947) or the special harm or damage that plaintiff incurred; nothing is set forth which even suggests that defendant did not have a legal right to send the alleged letters or that it was wrongful in itself (See Steward v. World-Wide Autos Corp., 20 Misc. 2d 183, at pp. 195-202, 189 N.Y.S. 2d 540 (Sup. Ct. Queens, 1959); Hecht v. Air Reduction Company, 41 Misc. 2d 463, 245 N.Y.S. 2d 935 (Sup. Ct. Queens, 1963)) or that defendants alleged act was "motivated solely by malice." Cosmopolitan Film Distrib. v. Feuchtwanger Corp., 226 N.Y.S. 2d 584, at 591 (not otherwise reported) (Sup. Ct. New York, 1962); Heath v. Ditch & Co., 22 Misc. 2d 649, 192 N.Y.S. 2d 380, at p. 386 (Sup. Ct., New York, 1959). In short, plaintiff has not stated the breach of any known legal duty owing from the defendant to it or "in some recognizable form, a cause of action known to the law." Howard Stores Corp. v. Pons, 1 NY. 2d 110, at p. 114 (1956).

However, assuming once again that a cause of action for sending the alleged letter "in 1961" did exist, it too is governed by the three year statutory period for such actions. C.P.A. §49(7); CPLR §214(4). Accordingly, this supposed cause

of action would have been barred, at the latest, on December 31, 1964 and cannot now be maintained.

POINT V

PLAINTIFF'S FIFTH CAUSE FAILS
TO STATE A CAUSE OF ACTION AND
WHAT IS STATED IS BARRED ON ITS
FACE BY THE STATUTE OF LIMITATIONS

In this cause of action, plaintiff appears to lump together the theories and allegations earlier pleaded with the addition that defendant's discontinuance of the DeSoto and breach of the alleged agreement was motivated by the desire to interfere with plaintiff's "prospective economic advantage" thereunder and part of a "conspiracy". (Par. 34)

As stated by the Court in Boro Motors Corp. v. Century Motor Sales Corp., 18 Misc. 2d 1009, 187 N.Y.S. 2d 490 (Sup. Ct., Kings 1959) in dismissing a complaint for legal insufficiency:

"The second cause of action against the corporate defendant and its officers realleges the contract and states that the defendants and others conspired to breach the contract and harm the plaintiff financially and enumerates many acts committed by defendants. The only interpretation the court can extract from this cause of action is that it charges defendants with a conspiracy to breach the contract. This it may not do against the corporate defendant since one contracting party does not have a cause of action against the other for conspiring to breach the contract or, for that

matter, for inducing the breach (Labow v. Para-Ti Corp., 272 App. Div. 890, 71 N.Y.S.2d 649). See also, Cuker v. Crow, 6 A.D. 2d 415, 173 N.Y.S.2d 777, at p. 779 (1st Dept., 1958).

Furthermore, if plaintiff's allegations are thought to be in "tort", plaintiff has failed, under the authorities reviewed in points III and IV above, to plead malice and special damages, to say nothing of some improper or unlawful act by defendant comprising such "tort".

In any event, again assuming that plaintiff has stated some cause of action, it too is barred on the face of the complaint by the Statute of Limitations. If in "tort", for injury to business and property interests, the three year statute would long bar plaintiff's "claim". C.P.A. §49(7); CPLR §214(4). If again in contract, for the DeSoto discontinuance "on November 18, 1960," the six year statute would bar plaintiff's claim. C.P.A. §48(1); CPLR §213(2).

CONCLUSION

Accordingly, for all the foregoing reasons, plaintiff's complaint should be dismissed.

Respectfully submitted,

KELLEY DRYE NEWHALL MAGINNES & WARREN
Attorneys for Defendant
350 Park Avenue
New York, New York 10022

Of Counsel
Robert Ehrenbard
Clark J. Gurney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No.

Nicholas Colabella
440 White Plains Road
Eastchester, New York

476 a

in the letter box regularly maintained and exclusively
controlled by the United States Government at No. 350 Park
Avenue, Borough of Manhattan, New York, New York 10022.

Charles L. Miller

Sworn to before me this
7th day of June, 1967.

Joseph Warren

JOSEPH WARREN
Notary Public, State of New York
No. 01900130
Qualified in Bronx County
Carl Egan in New York County
Commission Expires March 30, 1973

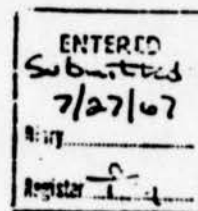
477 a

Exhibit "B"



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
ROCCO MOTOR SALES CORPORATION, :
Plaintiff, :
- against - :
CHRYSLER MOTORS CORPORATION, :
Defendant. :
-----X



DEFENDANT'S REPLY MEMORANDUM

KELLEY DRYE NEWHALL MAGINNES & WARREN
350 PARK AVENUE, NEW YORK 10022
212 PL 2-5800

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x
ROCCO MOTOR SALES CORPORATION, :
Plaintiff, :
- against - :
CHRYSLER MOTORS CORPORATION, :
Defendant. :
----- x

DEFENDANT'S REPLY MEMORANDUM

This memorandum is submitted in reply to plaintiff's attorney's answering affidavit, sworn to on the 18th day of July, 1967, made in opposition of defendant's motion to dismiss plaintiff's complaint. Although in the form of an affidavit it merely describes and argues for the sufficiency of the summons and quotes some of the allegations of the complaint, but no new factual matter has been provided and the legal points and authorities cited by defendant have been blithely ignored. As to the summons, plaintiff's attorney does little more than cite the CPLR which we submit sustains defendant's contention.

POINT I

PLAINTIFF'S FIRST CAUSE OF ACTION,
IF SUPPOSED TO EXIST, "ACCRUED" AT
THE TIME OF THE ALLEGED BREACH ON
NOVEMBER 18, 1960 AND IS BARRED ON
ITS FACE BY THE STATUTE OF LIMITATIONS

In response to defendant's motion to dismiss this cause of action for failure to properly plead breach of contract and the obvious bar of the Statute of Limitations, plaintiff has come forward with no facts or anything else to diminish the authority of the principles and cases cited by defendant or any authority even to attempt to take its pleading from without the statutory bar. Indeed, the attorney's affidavit reaffirms and concedes that the complained of and alleged breach of contract occurred on November 18, 1960, when Chrysler, as alleged, discontinued production of its DeSoto automobile. As stated in paragraph 10 of the attorney's affidavit:

"That by so discontinuing the production of DeSoto automobiles said agreement heretofore mentioned was breached..."

The fact that the affidavit nakedly claims the unspecified agreement to still be "in effect" (apparently suggesting that statute has not yet and never will begin to run) is of course legally meaningless here for it is

beyond discussion that "a cause of action accrues and the Statute of Limitations begins to run when a contract is breached..." Edlux Construction Corp. v. State of New York, 252 App. Div. 373, at p. 374, 300 N.Y.S. 509, 511-512 (emphasis supplied), aff'd 277 N.Y. 635, 14 N.E. 2d 197 (1938); Wolfe v. Glazer, 191 N.Y.S. 2d 532, 533, 17 Misc. 2d 522, 523 (Sup. Ct., App. Term, 2d Dept., 1959); Mon Radio & Electricals, Ltd. v. Von Cseh, 175 N.Y.S. 2d 458, 460, 12 Misc. 2d 435, 437 (Sup. Ct., N.Y. 1958). Even if the alleged agreement somehow still existed (which is difficult to understand since plaintiff has long ago discontinued its business) or "the damages...accrued [at] a later date" (Edlux, above, at p. 374), by plaintiff's own pleading and admission the alleged breach for which it seeks to recover occurred and the statute "began to run" on November 18, 1960. Accordingly, the action is barred on its face by the six year Statute of Limitations.

Even if plaintiff could somehow avoid the bar of the Statute, it still has not made out a cause of action. The attempt by plaintiff's attorney to extract references in the complaint to other matters such as parts and accessories reveals the lack of substance in the complaint for it also admits elsewhere that such parts and accessories

were furnished and that therefore there was no breach involving them. Thus it is immaterial whether as plaintiff's attorney now alleges there is or is not an agreement still in effect. The existence of an agreement does not give rise to a cause of action - only a breach thereof can be the basis of a cause of action and no term or provision of any agreement has been set forth, let alone facts showing such term to have been breached. Furthermore, as shown above, if a breach were alleged, it certainly occurred more than six years before commencement of the action and is barred by the Statute of Limitations.

POINT II

AS TO THE SECOND, THIRD,
FOURTH AND FIFTH CAUSES
OF ACTION

Plaintiff here once again fails even to attempt to distinguish defendant's authorities which hold that plaintiff has not (and could not) set forth a legally cognizable claim since one contracting party does not have a cause of action against the other for "inducing" the breach of their contract (see defendant's initial Memorandum of Law, p. 3) and that to plead a valid cause of action for "tortious interference" plaintiff must set forth facts showing defendant's acts were "motivated solely by malice", as well as the special damage caused to plaintiff and the violation of some

known legal duty by defendant or that defendant's acts were unlawful in themselves. (See Memorandum of Law, pp. 5-7).

However, seeking to cover up the absence of some legally known cause of action, plaintiff simply claims that its grievance is not barred by the three year Statute of Limitations for such actions. It is said, without any supporting fact or authority, that defendant's acts of allegedly discontinuing production on November 18, 1960 (second and fifth causes of action) and allegedly sending the brochure "some time in 1961" (third and fourth causes of action) was a "continuing wrong" (again suggesting no date on which the statute did or could ever begin to run) on the assumption that plaintiff continued to suffer damage after these acts took place. Nevertheless, plaintiff points to no act, wrongful or otherwise, by defendant which took place after "some time in 1961".

Indeed, the complete failure of plaintiff's attorney to point to any specific act or fact occurring after 1961 makes it crystal clear that the claims are barred by the Statute of Limitations. In addition, the Buono case cited in his affidavit in support of the Fifth Cause of Action has nothing whatever to do with the Statute of Limitations, "continuing wrongs", the sufficiency of a claim of conspiracy or any other question of pertinent New York law.

As stated by the Court in Hanrihan v. Parker, 19

Misc. 2d 467, 192 N.Y.S. 2d at p. 4 (Sup. Ct., N.Y. 1959):

"Plaintiff's plea that inducing a breach of contract is a continuing tort...has been considered by this Court and rejected in Hagan Corp. v. Medical Society of New York County, 135 Misc. 207, 135 N.Y.S. 2d 283, aff'd 279 App. Div. 1053, 113 N.Y.S. 2d 282."

Accordingly, plaintiff's causes of action for "tortious interference" if supposed to ever have existed, would have been barred at the latest on December 31, 1964 and certainly cannot now be maintained.

Respectfully submitted,

KELLEY DRYE NEWHALL MAGINTES & WARREN

Attorneys for Defendant
350 Park Avenue
New York, New York 10022

Of Counsel

Robert Ehrenbard, Esq.
Clark J. Gurney, Esq.
Dale Schreiber, Esq.

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Exhibit "C"

436 a

Law Office of
Dale A. Schreiber
175 Main Street
White Plains, New York 10601

914.769.2907

April 27, 1970

Clark J. Gurney, Esq.
Kelley Drye Warren Clark
Carr & Ellis
350 Park Avenue
New York, New York 10022

Checkers Chrysler
Re: Pearlman et al. v. Markin et al.

Dear Clark:

For your information, enclosed herewith please find a copy of an affidavit of Jesse Climenko, Esq. which attempts by innuendo to connect Chrysler with the institution of the above action. In view of the utter falsity of this innuendo, I believe your client may have some interest in preventing such groundless assertions in the future.

Sincerely,

Dale A. Schreiber
Dale A. Schreiber

DAS:BS
Enc.

exp. p 5 -

27 5 70
277552

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- -x
 :
 SILVER CHRYSLER PLYMOUTH, INC., :
 :
 Plaintiff, :
 :
 -against- : 73 C 853 (J.B.W.)
 :
 CHRYSLER MOTORS CORPORATION and : AFFIDAVIT
 CHRYSLER REALTY CORPORATION, :
 :
 Defendants. :
 ----- -x

STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

DALE A. SCHREIBER, being duly sworn, deposes and says:

1. I am a member of the firm of Hammond & Schreiber, attorneys for plaintiff Silver Chrysler Plymouth, Inc. in this action. This affidavit is submitted in reply to the affidavit of Robert Ehrenbard, Esq., sworn to October 30, 1973 ("third Ehrenbard affidavit"), which was received by our firm yesterday by mail, in connection with the Chrysler defendants' motion to dismiss the complaint on the ground that plaintiff's counsel are allegedly disqualified to act for plaintiff in this action.

2. In view of the already immense record mounted by the Chrysler defendants on this motion, I have refrained from replying specifically to most of the erroneous opinions and claims made in the third Ehrenbard affidavit except for one particular claim which I believe is amply refuted by documents on the public record.

3. At pages 14 and 15 of the third Ehrenbard affidavit, Mr. Ehrenbard attempts to downplay his cooperation with me in the Pearlman case discussed at length in my affidavit, sworn to October 8, 1973, at pages 9 through 13. According to Mr. Ehrenbard's late

affidavit, his cooperation with me was merely "a matter of professional courtesy" (p. 14). With respect to my meeting on October 14, 1970 with Mr. Ehrenbard, Mr. Ehrenbard claims that he did not "recall any real meeting with [me] on that date", so that one must conclude that he is in no position to either admit or deny my specific account of that meeting contained at pages 10 and 11 of my affidavit, sworn to October 8, 1973, or in this affidavit.

4. At pages 11 of my October 8, 1973 affidavit, I stated that within a short time after our October 14, 1970 meeting, Mr. Ehrenbard propounded to Checker in the Chrysler case a request for the production of the very documents produced in the Pearlman action, which I had shown to him and discussed with him at our meeting and he had had copied. The documents were of particular importance to Mr. Ehrenbard since they clearly contradicted the position taken by Checker in the Chrysler case with respect to Checker's projected profitability at various points of production. Although Mr. Ehrenbard attempted to create the contrary impression (third Ehrenbard affidavit, p. 15), on October 26, 1970, his firm did within twelve days of our meeting propound a request for the production of the very documents that I had shown him on October 14, 1970. I annex hereto as Exhibit A a copy of the first and last page of his firm's Request to Produce Documents dated October 26, 1970. The first two categories of documents set forth on the first page of the request called for the very documents that I had shown to Mr. Ehrenbard and their importance to Mr. Ehrenbard's position is evident by their placement at the beginning of the request. Mr. Ehrenbard does not attempt to explain why, after six years of litigation with Checker, he, within twelve days after our October 14, 1970 meeting, suddenly saw the need for these documents.

5. While Mr. Ehrenbard may be technically correct in contending at page 15 of his third affidavit that "I did not sign any request for production of documents such as [Schreiber] has described", this assertion is at best a Watergate half-truth. Mr. Ehrenbard does not deny that the first two categories of documents called for in the Chrysler request were formulated by him as a result of our meeting. The Chrysler case was clearly Mr. Ehrenbard's case and no one would doubt, least of all Mr. Ehrenbard, that he was the primary Chrysler lawyer on this case. Indeed, on October 15, 1970, eleven days before the service of the above described request to produce documents and one day after his meeting with me, Mr. Ehrenbard represented the following to Judge Mansfield at a hearing on the Chrysler case:

"You see, I am the only attorney working on this case for the defendants that had anything to do with it before your Honor was assigned to this case. This case was closed in our office. The associates who were familiar with it -- you may recall them -- who worked with me on the case when we had the motion for summary judgment had departed. Other associates in our office who had at one time or other worked on the case departed. At the present time I have no associate working with me who knows anything about the case.

"THE COURT: All you need is one good man. You are not going to deny your qualifications, are you?"

I annex hereto as Exhibit B copies of page 1 and 2 of the transcript of the October 15, 1970 hearing before Judge Mansfield.

6. I believe it is clear that Mr. Ehrenbard did not perceive any ethical problems in my representing Pearlman until his clients' interest dictated otherwise and that he did cooperate with me in the Pearlman case because he believed that it was to Chrysler's advantage at that time. While I was at Kelley Drye Mr. Ehrenbard did not, as he claims, ever discuss his "position as to [my] ethical obligations" with respect to the Pearlman case (third Ehrenbard affidavit, p. 14).

David A. Schreiber

Sworn to before me this
2nd day of November, 1973.

Alexander Hammond

ALEXANDER HAMMOND
Notary Public, State of New York
No. 51-4750900
Qualified in New York County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
CHECKER MOTORS CORPORATION,

Plaintiff,

: 64 Civ. 866

- against -

CHRYSLER CORPORATION and CHRYSLER
MOTORS CORPORATION,

Defendants.

: REQUEST TO PRODUCE
: DOCUMENTS AT DEPOSITIONS
: PURSUANT TO
: RULE 30(b)(5)
: -----x

S I R S :

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(5) of the Federal Rules of Civil Procedure, defendants Chrysler Corporation and Chrysler Motors Corporation ("Chrysler") request plaintiff Checker Motors Corporation ("Checker") to produce and permit defendants to inspect and to copy the following documents in Checker's possession or control at the taking of the depositions of Richard A. Yealin and other employees or former employees of Checker who will testify pursuant to notice, stipulation or subpoena:

1. All writings relating to studies, analyses, budgets, projections or forecasts, whether actual or prospective, referring to Checker's production, sales, costs, savings or profits or losses of taxicabs or passenger vehicles for any of the years 1950 through 1964 and any other years as to which Checker claims damages or refers in connection with its claims for damages.

2. All writings used by Mr. Yealin or others acting for Checker in preparing its claims for damages.

consideration of any dealings or contemplated dealings with Chrysler or any supplier or possible supplier of automotive components or parts, any action that may be taken in connection with obtaining automotive parts or components from Chrysler or any such supplier, any changes in the use of parts or components or the models or vehicles to be produced by Checker or any matters that are elements of any damages or losses claimed by Checker.

8. Any writings that duplicate or reflect any internal Chrysler writings other than those to which production numbers have been assigned that were produced by Checker in answer to interrogatories.

It is requested that if plaintiff objects on any grounds to the production of any of the foregoing documents at the forthcoming depositions, they give prompt written notice of their objections to the attorneys for the defendants so that prompt rulings may be sought.

Dated: New York, New York
October 26, 1970

Yours, etc.

KELLEY DRYE WARREN CLARK CARR & ELLIS
Attorneys for Defendants

By: Francis S. Mendel

A Member of the Firm
350 Park Avenue
New York, New York 10022

TO:

SHEA GALLOP CLIMENKO & GOULD
Attorneys for Plaintiff
330 Madison Avenue
New York, New York 10017

DEC 22 1970

mdjw

Checker Motors Corporation,

Plaintiff,

vs.

Chrysler Corporation, et al.,

64 Civil 866

Defendants and Third-
Party Plaintiffs,

vs.

Checker Taxi Company, et al.,

Third-Party Defendants.

New York, N. Y.
October 15, 1970
11 o'clock a. m.

BEFORE:

Hon. Walter R. Mansfield,
District Judge.APPEARANCES:SHEA, GALLOP, OLIVIERO & COULD, ESQS.,
Attorneys for Plaintiff,
William Schurman, Esq.,
Jerome D. Mandt, Esq., and
Herbert D. Lazarus, Esq.,
of Counsel.KELLEY, DINE, HENRIALL, MACDONES & WARREN, ESQS.,
Attorneys for Defendants,
Robert Ehrenhard, Esq.,
of Counsel.

- - -

THE COURT: Good morning, gentlemen.

MR. EHRENHARD: I would like to apologize for the
delay in opening the proceedings this morning. I would like

mdjw

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1
2 to explain one of the problems and difficulties I have been
3 laboring under in this case, your Honor. It has some bearing
4 on the total situation this morning with respect to this
5 motion.

6 You see, I am the only attorney working on this
7 case for the defendants that had anything to do with it before
8 your Honor was assigned to this case. This case was closed
9 in our office. The associates who were familiar with it -
10 you may recall them - who worked with me on the case when we
11 had the motion for summary judgment had departed. Other
12 associates in our office who had at one time or other worked
13 on the case departed. At the present time I have no associates
14 working with me who knows anything about the case.

15 THE COURT: All you need is one good man. You are
16 not going to deny your qualifications, are you?

17 MR. HENNEBARD: I appreciate your comments about me.
18 That brings me to the next problem. While this case has been
19 dormant, to say the least, if not abandoned, as we viewed it,
20 I have undertaken many responsibilities to other courts and
21 other cases and other clients.

22 THE COURT: I am sure you have.

23 MR. HENNEBARD: I have found myself over the last
24 few months in an almost impossible situation, attempting to
25 get together to review this matter, to find out what action

SILVER CHRYSLER PLYMOUTH,
INC., Plaintiff,

v.

CHRYSLER MOTORS CORPORATION
and Chrysler Realty Corporation,
Defendants.

No. 73-C-853.

United States District Court,
E. D. New York.

Nov. 26, 1973.

Action was brought by automobile dealer against manufacturer and associated real estate corporation for breach of dealership lease. On defendants' motion to disqualify the law firm representing dealer, the District Court, Weinstein, J., held that attorney who had been an associate in 80-member firm which had represented automobile manufacturer and its associated companies would not be irrebuttably presumed to have the knowledge of confidences of every attorney in the firm which had represented manufacturer, and disqualification was not warranted.

Motion denied.

1. Attorney and Client ¶21

When confronted with issues of disqualification of counsel for conflict based on former representation, court must protect the confidentiality of the relationship between client and attorney, yet it must be cautious not to interfere

needlessly with the freedom of litigants to proceed with counsel of their choice. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix.

2. Attorney and Client ¶21

Canons may not be used to engross legal talent or to obtain the advantages of an implied restrictive covenant that would be of doubtful validity in any other employment situation. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix.

3. Evidence ¶75

Production of law firm's time records relevant to issue of disqualification of counsel for conflict based upon former representation would normally not entail disclosure of client's confidences, and negative inferences from the firm's failure to produce records in its exclusive control may be drawn. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix.

4. Attorney and Client ¶21

Former client has right to protect his confidences by preventing the appearance of his attorney as an adversary in substantially related matters. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix.

5. Attorney and Client ¶21

As bearing on whether former member of law firm representing client adverse to client of the law firm was exposed to confidential information of value in the subsequent litigation, the persuasiveness and detail of the proof required will vary inversely with the status of the lawyer in the firm, and a senior partner will bear a greater risk than a junior associate of ultimate preclusion from representing client hostile to one the firm represented. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix.

6. Attorney and Client ¶21

For purposes of disqualification of attorney representing client hostile to client of law firm of which attorney has been a member, an associate will not be charged with the knowledge of the con-

fidences of every lawyer in 80-member firm. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix.

7. Attorney and Client ¶30

For purpose of disqualification of attorney representing client hostile to client of 80-member law firm in which attorney had been an associate, attorney would not be irrebuttably presumed to have knowledge of confidences of every lawyer in the firm. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix; Federal Rules of Evidence, rule 301, 28 U.S.C.A.

8. Attorney and Client ¶21

Where an attorney as member of law firm himself represented a client in matters substantially related to those embraced by a subsequent case he wishes to bring against the former client, he is irrebuttably presumed to have benefited from confidential information relevant to the case and, for purpose of disqualification, there is no necessity to demonstrate actual exposure to specific confidences which would benefit the present client. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix.

9. Attorney and Client ¶21

Attorney representing automobile dealer in action against automobile manufacturer and associated real estate corporation for breach of dealership lease was not disqualified by reason of having been an associate in 80-man firm which had represented manufacturer and associated companies where it was established that attorney had no actual knowledge of confidences of every lawyer in the firm.

10. Attorney and Client ¶21

In order to disqualify attorney from representing client hostile to client of law firm in which attorney had been an associate, actual activities on specific cases by attorney must be demonstrated which would make it reasonable to infer that he gained some information about his former client of some value to his

SILVER CHRYSLER PLYMOUTH, INC. v. CHRYSLER MOTORS CORP. 583

Cite as 370 F.Supp. 581 (1973)

present client, and disqualification couched in notions of possible appearance of improprieties will not be made on basis of vague or indefinite allegations. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix.

11. Attorney and Client ¶32

Rules appropriate in guiding lawyers of several decades ago must be applied in light of current realities. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix.

12. Monopolies ¶12(17)

Large law firms may not protect their clients by monopolizing young talent. Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

13. Monopolies ¶12(17)

Canons of ethics furnish no warrant for illegal restraints on trade. Code of Professional Responsibility, Canon 4, Judiciary Law N.Y. Appendix; Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq.

Hammond & Schreiber, New York City, for plaintiff.

Kelley, Drye, Warren, Clark, Carr & Ellis, New York City, for defendants; Robert Ehrenbard, New York City, of counsel.

MEMORANDUM AND ORDER

WEINSTEIN, District Judge.

Defendants move to disqualify the law firm representing plaintiff on the ground that one of its attorneys previously represented one of the defendants in other, related matters. For the reasons stated below the motion must be denied.

I. SUMMARY

The present action is brought by Silver Chrysler Plymouth (Dealer), an authorized dealer of Chrysler Corporation against Chrysler Motors Corporation (Chrysler) and Chrysler Realty Corporation (Realty) for breach of a dealership

lease. Defendants are represented by the firm of Kelley, Drye, Warren, Clark, Carr & Ellis. Plaintiff is represented by the firm of Hammond & Schreiber.

An alleged conflict arises out of Schreiber's previous employment as an associate with Kelley, Drye, Newhall, Maginnes & Warren, predecessor to defendants' law firm (both hereinafter "Kelley Drye"), which has represented Chrysler and its affiliates in a substantial number of legal matters. Defendants claim that Schreiber's work at Kelley Drye disqualifies his firm from representing plaintiff because of confidences he may have had access to or because of the appearance of impropriety.

[1] Issues of disqualification of counsel for conflicts based on former representation present the courts with especially delicate policy and factual decisions. On the one hand the court must protect the confidentiality of the relationship between client and attorney. This duty is laid down in Canon 4 of the Code of Professional Responsibility: "A lawyer should preserve the confidences and secrets of a client." The court is charged with the duty of insuring maintenance of "the highest ethical standards of professional responsibility." *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562, 565 (2d Cir. 1973). See Pater-son and Heatham, *The Profession of Law* 277-279 (1971).

[2] Yet, on the other hand, the courts must be cautious not to interfere needlessly with the freedom of litigants to proceed with counsel of their choice, and, as illustrated in the circumstances of the present case, not to unnecessarily circumscribe the career of a young professional. The Canons may not be used to engross legal talent or to obtain the advantages of an implied restrictive covenant that would be of doubtful validity in any other employment situation.

II. FACTS

A. Counsel for the Parties

Dale Schreiber graduated as an honor student from Columbia Law School in

June 1965. He was hired by Kelley Drye as an associate, commencing September 1965 at an annual salary of \$7,800. In late fall 1965, he left Kelley Drye when he was appointed law clerk to Marvin E. Frankel, United States District Judge for the Southern District of New York. Schreiber returned to Kelley Drye in September 1966, at an annual salary of less than \$10,000. In February 1969, after approximately thirty-two months total employment, he left the firm and established his own practice in White Plains, New York. In August 1970 he accepted an invitation from Mr. Hammond—a senior lawyer with a national reputation for his representation of automobile dealers—to form their present two man firm.

While relatively modest in size as compared to some other firms which range up to Baker and McKenzie's 240 lawyers, the eighty member—30 partners and 50 associates—Kelley Drye firm is well known and respected in the legal and commercial worlds. Since 1925 it has actively represented Chrysler and its associated companies, one of the nation's half dozen biggest corporate groups. Although Kelley Drye is listed on Chrysler's reports as "counsel" and its 1971 fees from Chrysler were reported to be close to \$600,000, other lawyers throughout the country also represent this client. It has been estimated in affidavits before the court that the number of lawyers associated with firms representing Chrysler interests in recent years runs into the thousands. As in the case of most large law firms, Kelley Drye has a high rate of associate turnover; it is said that since 1965 this firm has probably employed some two hundred lawyers.

B. Present Litigation

The complaint in the present action charges that Chrysler entered into a standard form Dealer Relocation Agreement with Dealer in January 1967. The agreement provided that Chrysler would erect a facility to be occupied by Dealer at a rental computed under a special for-

mula. Before the new building was completed, Chrysler transferred its real estate operations to Realty. In 1968, Dealer occupied the premises, at which time it signed a new form lease agreement with Realty. The new agreement was for a five year term, compared to what Dealer alleges was the original twenty-five year period.

Dealer alleges that it was assured on signing that the new lease in no way prejudiced any rights under the original agreement. When the five year term expired in May 1973, Realty threatened Dealer with eviction unless it signed a new agreement at a higher rental. Refusing to sign, since June 1 Dealer has paid the higher rent under protest. In this action declaratory, injunctive and monetary relief to redress the alleged breach of the original Dealer Relocation Agreement is sought.

Three theories underlie the complaint. The first two, grounded on diversity and pendant jurisdiction, are essentially based on contractual breach of the Dealer Relocation Agreement by Chrysler and Realty. The third, based on the Dealers' Day in Court Act, 15 U.S.C. § 1221 et seq., alleges that defendants coerced plaintiff into relinquishing the benefits of its Dealer Relocation Agreement by threats of termination, non-renewal and otherwise.

C. Prior Litigation

As to confidences gained by Schreiber through his personal involvement in Chrysler cases, defendants allege:

Mr. Schreiber . . . was personally engaged in extensive legal work for and representation of Chrysler . . . and other Chrysler companies, and obtained immeasurable confidential information regarding the practices, procedures, methods of operation, activities, contemplated conduct, legal problems, and litigations of those companies.

More specifically, defendants charge:

Mr. Schreiber's representation of Chrysler encompassed numerous mat-

ters in which Chrysler's real estate and other business practices were involved, as well as relationships with dealers and specific actions against Chrysler by dealers, including an action which, like the case at bar, relied in part upon an alleged violation of the Dealer's Day in Court Act.

[3] While both sides have provided the court with extensive recitals of the work done by him at Kelley Drye, assessment of Schreiber's involvement in Chrysler matters has been hampered by the absence of Kelley Drye's relevant time records. Production of such records would normally not entail disclosure of client confidences. *United States v. Long*, 328 F.Supp. 233 (E.D. Mo.1971). Negative inferences from the firm's failure to produce records in its exclusive control may be drawn. *Cf. Case v. New York Central R. Co.*, 329 F.2d 936 (2d Cir. 1964); *Matarese v. Moore-McCormack Lines*, 158 F.2d 631, 637 (2d Cir. 1946); *Pacific-Atlantic S. S. Co. v. United States*, 175 F.2d 632, 636 (4th Cir.), cert. denied, 338 U.S. 868, 70 S.Ct. 143, 94 L.Ed. 532 (1949).

Considerable weight must be given to the affidavit of Mr. Clark J. Gurney who was the associate most closely involved with Chrysler's dealer suits during Schreiber's tenure at the firm. Gurney affirms that to the best of his recollection Schreiber "did not work directly or indirectly on Chrysler dealer litigation, with the possible exception of researching a few specific points of law that may have been involved in a dealer case." The scope of the research is demonstrated by Schreiber's involvement in *Rocco Motors v. Chrysler*, Index No. 5120/1967 (N.Y.Sup.Ct.West.Co.). In *Rocco*, the only dealer case Schreiber recalls working on, his involvement amounted to researching a motion made to dismiss under the statute of limitations.

With respect to Chrysler realty matters both the issues raised and Schreiber's involvement appear equally remote

as respects this litigation. For example, defendants argue that Schreiber represented Chrysler real estate interests in a litigation entitled *Polk v. Cross & Brown Co.*, a suit in the Civil Court of New York City. Defendants urge, "He thereby became familiar with some of Chrysler's practices as a landlord." The details, however, belie any possible relation of the issues in *Polk* to the matters involved in the present action—beyond the semantic similarity that real estate was involved in both actions. *Polk* was an action brought by the Legal Aid Society seeking damages for a plaintiff (apparently a welfare client) who claimed he had been wrongfully evicted from the Circle Hotel. The hotel was then owned by a Chrysler subsidiary, Chrysler Manhattan. Schreiber declares that his only recollection of involvement with the case "is that I was sent down to adjourn a motion or hearing on this case." Defendants state that Schreiber drafted the answer in this action. Whatever the extent of Schreiber's involvement, the remoteness of the facts and issues of *Polk* to matters raised by the present action is striking.

The only significant Chrysler case in which Schreiber had extensive involvement while at Kelley Drye was *Checker v. Chrysler*, 283 F.Supp. 876 (S.D.N.Y. 1968), affirmed, 405 F.2d 319 (2d Cir.), cert. denied, 394 U.S. 999, 89 S.Ct. 1595, 22 L.Ed.2d 777 (1969). In this treble damages antitrust action commenced in 1964, Checker, a manufacturer of taxicabs competing with Chrysler, alleged that Chrysler was conducting a predatory campaign to put Checker out of business in violation of the Sherman Act. Schreiber's participation involved successful opposition to motions for summary judgment and a preliminary injunction.

Checker claimed that Chrysler gave cash rebates to all purchasers of taxicabs from Chrysler dealers as part of an illegal price fixing agreement. In denying Checker's motion, the District Court found that the plan did not have a tendency to restrict the pricing independence

of dealers who remained free to determine ultimate retail sales price. At most, this case would have permitted exploration of the pricing arrangements between manufacturer and dealer. There is no substantial relation which can be reasonably established between the issues involved in the *Checker* case and the matters embraced by the current action.

III. LAW

[4] The law in this field has recently been reexamined by the Second Circuit in *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562 (1973). Governing standards laid down twenty years ago assure the right of a former client to protect his confidences by preventing the appearance of his attorney as an adversary in substantially related matters. As the court noted (478 F.2d at 570) (footnote omitted):

We take as our guidepost in applying the language of Canon 4 to this case the standard articulated by Judge Weinfeld in *T. C. Theatre Corp. v. Warner Bros. Pictures*, 113 F.Supp. 265 (S.D.N.Y.1953). There the court said:

I hold that the former client need show no more than that the matters embraced within the pending suit wherein his former attorney appears on behalf of his adversary are *substantially related* to the matters or cause of action wherein the attorney previously represented him, the former client. The court will assume that during the course of the former representation confidences were disclosed to the attorney bearing on the subject matter of the representation. It will not inquire into their nature and extent. Only in this manner can the lawyer's duty of absolute fidelity be enforced and the spirit of the rule relating to privileged communications be maintained.

113 F.Supp. at 268-269 (emphasis supplied [by Court of Appeals]).

The instant case is substantially different from *Emle* and like cases, for the lawyer now sought to be disqualified was not the moving force in the earlier litigation, but rather was a young associate in a large firm, for the most part assigned to research narrow issues in the representation of Chrysler and its affiliates. Cf. *Consolidated Theatres v. Warner Bros. Cir. Man. Corp.*, 216 F.2d 920, 926 (2d Cir. 1954) (salaried clerks not immune from these ethical considerations, but relationship between the matters litigated was "substantially similar" with respect to several issues); Note, *Disqualification of Attorneys for Representing Interests Adverse to Former Clients*, 64 Yale L.J. 917, 928 (1955) (cautioning against a rigid application of the rule of the *Consolidated Theatres* case to young professionals). There is a substantial question whether the *Emle* standard should be applied to an attorney in Schreiber's position who can only technically be said to have represented Chrysler in these earlier matters. See also Note, *Unchanging Rules in Changing Times: The Canons of Ethics and Intra-firm Conflicts of Interest*, 73 Yale L.J. 1058, 1072 (1964) (firms aware of the lesser nature of involvement with respect to disqualification when an associate is involved).

Assessing the likelihood that Schreiber was exposed to confidential information of value to plaintiff in the present case is difficult. Undoubtedly, somewhere within the confines of Kelley Drye during the years Schreiber was employed, there existed a great deal of data, obtained confidentially, which could be of some value to some possible future antagonist of Chrysler—including plaintiff in this action. Such confidences would be in the form both of documents and of oral information acquired by other members of the firm who had represented Chrysler in various matters.

[5] Decision turns on whether, in the course of the former "representation," the associate acquired information reasonably related to the particular subject matter of the subsequent represen-

tation. In making this determination the court will assume that a senior partner knows more about what is happening in the firm generally than does a junior associate. Even if this is not true as a matter of fact, the greater responsibilities, freedom of choice in selecting clients, and remuneration of the senior make it fitting that he bear the greater risk of ultimate preclusion from representing a client hostile to one his firm represented. The persuasiveness and detail of the proof required will thus vary inversely with the status of the lawyer in the firm in the prior litigation. Cf. *Consolidated Theatres v. Warner Bros. Cir. Man. Corp.*, 216 F.2d 920, 927 (2d Cir. 1954) ("real capacity that of associate counsel").

[6] The law must reject defendants' suggestion that for purposes of disqualification, in an organization as large as Kelley Drye, every associate is charged with the knowledge of the confidences of every lawyer in the firm. Nor can it accept the more limited submission that any associate who did substantial work for a client is thereafter precluded from opposing it in any litigation. Each case must rest on a close analysis of the facts in the light of the sometimes conflicting policies favoring protection of former client confidences and freedom of new clients to retain attorneys of their choice. We analyze the facts in the light of the three categories relied upon by defendants, viz:

(1) imputation of knowledge of other attorneys at Kelley Drye;

(2) personal exposure based on Schreiber's own work on Chrysler matters; and

(3) appearance of impropriety.

1. *Imputation of Knowledge*

Defendants maintain:

As an associate here [Schreiber] was exposed without restriction, not only to matters on which he worked, but also to the entire scope of this firm's work.

Information obtained concerning the hundreds of other Chrysler matters being handled by other attorneys in this office . . . would undoubtedly be of use to him in this action. . . . [T]here is an irrebuttable presumption Mr. Schreiber shared information with other attorneys.

[7,8] In the factual situation presented by the instant case the contention that there is an irrebuttable presumption of imputed knowledge must be rejected. See *Fleischer v. A.A.P., Inc.*, 163 F.Supp. 548, 552 (S.D.N.Y.1958), appeal dismissed, 264 F.2d 515 (2d Cir.), cert. denied, 359 U.S. 1002, 79 S.Ct. 1139, 3 L.Ed.2d 1030 (1959). Only where an attorney himself represented a client in matters substantially related to those embraced by a subsequent case he wishes to bring against the former client, is he irrebuttably presumed to have benefitted from confidential information relevant to the current case. See *Fleischer v. A.A.P., Inc.*, *supra*, 163 F. Supp. at 552. In such limited situations there is no necessity to demonstrate actual exposure to specific confidences which would benefit the present client. But, as Judge Herlands noted in *Fleischer* (*ibid.*), in a case "where the attorney may be 'vicariously disqualified' (as by virtue of his former membership in a law partnership), the inference is treated as rebuttable."

In support of their position defendants place primary reliance upon *Laskey Bros. of W. Va., Inc. v. Warner Bros. Pictures, Inc.*, 224 F.2d 824 (2d Cir. 1955), where in a very different factual context an irrebuttable presumption of imputed knowledge was applied to bar an attorney's involvement in an anti-trust case in which his former firm had been disqualified from representation. *Laskey's* primary significance was in its ruling that once any member of a firm is disqualified the prohibition is extended to other members of that firm. *Id.* at 826. Judge Kaufman was subsequently to note that *Laskey* made equal-

ly clear that "a former partner barred only by imputed knowledge may rebut the inference that he received confidential information from the attorney with actual knowledge."—United States v. Standard Oil Company, 136 F.Supp. 345, 364 (S.D.N.Y.1955).

[9] While there is some doubt whether a presumption should be applied against a challenged junior associate, we need not reach this question. Assuming, without deciding, that there is a presumption, whether it is of a classic Thayerian type, shifting only the burden of coming forward, or of the more stringent type embodied in the not yet operative Rule 301 of the Rules of Evidence for United States Courts and Magistrates, shifting both the burdens of coming forward and of persuasion, it has been rebutted by Schreiber.

Defendants' proposed rule of an irrebuttable broad presumption would forever bar any participation in any suits against any interest ever represented by a previous firm by all partners and associates of a large firm—even students working for one summer. The size and influence of modern law firms and the number of huge national and international corporate interests they represent militate against such a harsh result.

Especially is this true in relation to young associates. Their exposure to matters they are not themselves researching is necessarily limited, both by the briefness of their tenure and by their narrow responsibility with respect to the questions they are asked to investigate. Responsibility to protect client's confidences as well as the need to avoid uneconomic duplication of effort will normally restrict internal circulation of information about clients to those with some need to know. These policies tend to limit the exposure of junior associates to client confidences.

Since the largest firms represent the largest corporations with interests in all sectors of the economy, it is almost impossible to have an important client or its subsidiary avoid some kind of legal

relationship with another client at some time. Cf. E. O. Smigel, *The Wall Street Lawyer* 234 (1964). "Where a firm represents concurrently conflicting interests, the practice is sometimes followed of 'splitting up' the firm into separate teams of lawyers, each of which represents one of the antagonistic clients." Note, *Unchanging Rules in Changing Times: The Canons of Ethics and Intra-firm Conflicts of Interest*, 73 Yale L.J. 1058, 1071 (1964). Cf. J. C. Goulden, *The Superlawyers* 53 (1972). (Covington and Burling "isn't really a law firm. . . . Actually, it's a conglomeration of fifty law practices."). The fact that attorneys within the firm are effectively insulated from exposure to the confidences of other clients where necessary demonstrates the inappropriateness of an invariable mechanical imputation of knowledge. Here the evidence demonstrates that there was no actual knowledge.

2. Actual Knowledge

The remoteness of Schreiber's role in previous Chrysler litigation is particularly apparent when compared with the activities of attorneys involved in the cases where disqualification has been required. In *Motor Mart, Inc. v. Saab Motors, Inc.*, 359 F.Supp. 156 (S.D.N.Y. 1973), the case which defendants urge has striking similarity to the current action, disqualified counsel had sought to bring an action for damages against Saab under the Dealer's Day in Court Act based on claims of unlawful termination of an automobile dealership. Counsel had represented Saab on a regular basis over a five year period. He had drafted the basic dealer agreement used by Saab, in addition to being involved extensively in other aspects of the company's legal relations to its dealers. During that period, he represented Saab in a state court case based on substantially similar allegations. His apparent role in representing the client in a broad range of activities, some of them relating directly to matters embraced by the litigation in which he was

disqualified, cannot be meaningfully compared to Schreiber's work at Kelley Drye.

3. *Appearances of Impropriety*

[10] Defendants seem to suggest that the complexities of the factual determination to be made by this court should be avoided by a decision couched in notions of possible appearance of impropriety. On the contrary, the importance of the underlying policy considerations call for careful analysis of the matters embraced by previous and present litigations. Vague or indefinite allegations do not suffice. Actual activities on specific cases by Schreiber must be demonstrated which would make it reasonable to infer that he gained some information about his former client of some value to his present client. The danger of damage to public confidence in the legal profession would be great if we were to allow unfounded charges of impropriety to form the sole basis for an unjust disqualification.

IV. DANGERS OF UNNECESSARY RESTRICTIONS ON YOUNG ATTORNEYS

A concern both for the future of young professionals and for the freedom of choice of the litigant in specialized areas of law requires care not to disqualify needlessly. As Judge Clark wisely cautioned in *Laskey Bros. of W. Va., Inc. v. Warner Bros. Pictures, Inc.*, 224 F.2d 824, 827 (2d Cir. 1955), the rules of disqualification should not be so rigid that "young lawyers might seriously jeopardize their careers by temporary affiliation with large firms."

[11] Changing times have resulted in continual modification of the practitioner's ethical, social and political roles in our society. See Patterson and Cheatham, *The Profession of Law* 19-23, 65-67 (1973). Rules appropriate in guiding lawyers of several decades ago must be applied in light of current realities. See Note, *Unchanging Rules in Changing Times: The Canons of Ethics and Intra-firm Conflicts of Interest*, 73

Yale L.J. 1058 (1964). As the author of the Yale Note perceptively points out (at 1069), the rigid rule of total disqualification

is premised in the day when firms, when they existed, were very small—also a day when attorneys most frequently could think of their activities in terms of discrete "matters". Increasingly, neither condition maintains.

Law remains one of the few professions where young people can establish themselves without large amounts of initial capital. Many distinguished lawyers have served brief apprenticeships with large firms where they have, in many instances, concentrated their work in highly specialized fields. The mode of assignment of work to young associates in modern large law firms make unreasonable a rule of disqualification which would prevent them from ever litigating against clients of their former firm. Young lawyers will necessarily become overcommitted to their initial employer if the rules of disqualification are applied so as to prevent them from being retained by clients seeking their specialized services.

The dangers are enhanced by an increasing trend towards concentration in the legal profession. There has been a dramatic decrease over the past two decades in the percentage of lawyers practicing individually and a corresponding increase in the percentage of attorneys affiliated with firms. American Bar Foundation, *The 1971 Lawyer Statistical Report* (1972). In 1959 59% of the attorneys in this nation were individual practitioners, while 27.8% were partners or associates in firms; by 1970 the percentage of attorneys practicing alone had shrunk to 36.6%, while 36.1% were now associated with firms. *Ibid.* at p. 10.

Large law firms throughout the country continue to grow in size and relative power. See, e.g., E. O. Smigel, *The Wall Street Lawyer* 43 (1964). They also continue to attract a more than proportionate share of exceptional

law school graduates. A dramatic example is provided in *Kohn v. Royall, Koegel & Wells*, 59 F.R.D. 515, 520-521 (S.D. N.Y. 1973), a challenge to the hiring practices of one of this city's large firms. The case reveals that of approximately 500 women in the legal profession in a position to receive consideration for jobs at Royall, Koegel & Wells in 1970, the firm received applications from 78 women—some 16%. While there has reputedly been a slight decrease in the popularity of the large law firms among the most dedicated young lawyers, they still offer the highest potential income and tend to attract the largest share of talented law graduates. See, e.g., P. Hoffman, *Lions in the Street* 4, 132-134 (1973); J. C. Goulden, *The Superlawyers* 55, 59 (1972); M. Mayer, *The Lawyers* 111 (1967); E. O. Smigel, *The Wall Street Lawyer* 38-39 (1964); Note, *A Survey of Chicago Law Student Opinions and Career Expectations*, 67 Nw.U.L.Rev. 628, 629, 639-40 (1973). With large firms exerting such a compelling influence over bright young lawyers, rules which would seriously curtail their future work must be construed so that they are not applied in an unnecessarily restrictive way.

The problem is not limited to associates in large firms. It exists in smaller communities where a few law firms handle most of the commercial practice or in national firms of a modest size specializing in areas of law or commerce. M. Mayer, *The Lawyers* 388 (1967). As one astute commentator put it (Note, *Unchanging Rules in Changing Times: The Canons of Ethics and Intra-firm Conflicts of Interest*, 73 Yale L.J. 1059, 1068 (1964) (footnotes omitted)):

Such unexpected conflicts, either between current clients or between a current and past client, are particularly to be expected in the smaller metropolitan centers, where a small number of law firms handle much of the area's substantial commercial practice. The

problem frequently appears in the larger cities as well, however, where the firm represents a full roster of major commercial clients whose very size and range of operation make it inevitable that they come in conflict on a more or less regular basis. The incidence of sudden conflicts between current or past clients may also be aggravated by the growing specialization among some law firms. As a firm's business is conducted within increasingly narrow scope, the class of potential clients is usually reduced correspondingly.

See also *Proceedings of American Law Institute*, 41 U.S.L.W. 2627 (1973) (P. A. Wolkin forecasting an accelerated tendency towards specialization in the bar); I. F. Reichert, Jr., *The Future of Continuing Legal Education*, 178, in *Law in A Changing America* (G. C. Hazard, Jr., ed. 1968).

In a related field, that of restrictions on the right of employees to compete with their former employers, the courts have refused to enforce covenants overly restrictive of free trade. See, e.g., Blake, *Employment Agreements Not to Compete*, 73 Harv.L.Rev. 625 (1960); Goldschmidt, *Antitrust's Neglected Stepchild: A Proposal For Dealing With Restrictive Covenants Under Federal Law*, 73 Col.L.Rev. 1193 (1973). In applying a test of reasonableness to such restraints, Professor Blake points out, hardship on the employee as well as the injury to society are crucial factors in the court's determination as to whether the covenant will be allowed. Cf. Goldschmidt, 73 Col.L.Rev. 1193, 1196. As early as 1831 the English courts recognized that such restrictions would be held invalid where found "so large as to interfere with interests of the public." *Homer v. Graves*, 7 Bing. 735, 743, 131 Eng.Rep. 284, 287 (C.P.); Blake, 73 Harv.L.Rev. 625, 639. Professor Blake's analysis of the possible damages to society of employment restrictions serves as an apt description of some of the hazards incident to an unnecessarily harsh

rule of attorney disqualification. Such restrictions

reduce both the economic mobility of employees and their personal freedom to follow their own interests. These restraints also diminish competition by intimidating potential competitors and by slowing down the dissemination of ideas, processes and methods. *Id.*, at 627.

[12, 13] Antitrust implications in unduly restricting the work of the largest law firms' former associates are not insubstantial since these firms have as clients corporations that control a major share of the American economy. See, e. g., P. Hoffman, *Lions in the Street* 16-36, 40-41, 43-44 (1973); W. J. Hudson, *Outside Counsel: Inside Directors-Lawyers on the Boards of American Industry* (1973). Large law firms may not protect their clients by monopolizing young talent. The Canons of Ethics furnish no warrant for illegal restraints on trade.

We agree, as the Court of Appeals put it, that the courts should be cautious lest they "cast aside ethical responsibilities out of an excess of antimonopolistic fervor." *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562, 574 (2d Cir. 1973). But neither should the courts ignore the practical effect of, to paraphrase *Emle*, "an excess of ethical fervor," that unnecessarily restricts freedom of attorneys, clients, and our system of free enterprise. In his dissent in *Harmon Drive-In-Theatre, Inc. v. Warner Bros. Pictures, Inc.*, 239 F.2d 555, 559 (2d Cir. 1956), reh. denied, 241 F.2d 937, cert. denied, 355 U.S. 824, 78 S.Ct. 31, 2 L. Ed.2d 38 (1957), Judge Clark cautioned:

... the dangers of using legal ethics as a club to protect monopolists or harass complainers ... suggest care and concern lest we go too far.

Disqualification of plaintiff's counsel is not warranted. Defendants' motion is denied.

So ordered.

MEMORANDUM AND ORDER DATED DECEMBER 17, 1973
OF THE HONORABLE JACK B. WEINSTEIN, UNITED
STATES DISTRICT JUDGE FOR THE EASTERN
DISTRICT OF NEW YORK.

"The parties have submitted this motion on the briefs. The court is convinced that an immediate appeal will not materially advance the ultimate termination of this litigation but that, rather, it will add unnecessarily to the burdens on the parties and to the appellate calendar. The parties should endeavor to complete preparations for trial so that this simple case can be speedily disposed of without unnecessary motion-practice. The motion is denied in all particulars. So ordered.

December 17, 1973

Jack B. Weinstein
U.S.D.J."

506 a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OFFICE
K.D.W.C.C.&E.
COPY

SILVER CHRYSLER PLYMOUTH,

Plaintiff,

-against-

CHRYSLER MOTORS CORPORATION and
CHRYSLER REALTY CORPORATION,

Defendants.

73 Civ. 853
(Weinstein, J.)

NOTICE OF APPEAL



S I R S :

NOTICE IS HEREBY GIVEN that Chrysler Motors Corporation and Chrysler Realty Corporation, defendants above-named, hereby appeal to the United States Court of Appeals for the Second Circuit from the Order in this action dated November 26, 1973 and entered in this Court on November 27, 1973, denying defendants' motion to enjoin and disqualify plaintiff's attorneys and to dismiss the complaint because of such disqualification.

Dated: New York, New York
December 21, 1973

KELLEY DRYE WARREN CLARK CARR &
ELLIS

By

[Signature]
A Member of the firm
Attorneys for Defendants
350 Park Avenue
New York, New York 10022
(212) PLaza 2-5800

TO:

HAMMOND & SCHREIBER, ESQS.
Attorneys for Plaintiff
1185 Avenue of the Americas
New York, New York 10036
(212) 869-9696

ORDER DATED APRIL 30, 1974 OF THE HONORABLE
JACK B. WEINSTEIN, UNITED STATES DISTRICT
JUDGE FOR THE EASTERN DISTRICT OF NEW YORK.

"Pursuant to what this Court construes
the spirit of the Court of Appeals in
permitting an appeal from the order of
November 26, 1973, this Court will con-
sider the stay as still operative pend-
ing disposition of the appeal. The
clerk will inform the parties. So ordered.

April 30, 1974

Jack B. Weinstein
U.S.D.J."

508 a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

DIETRICH MEYERHOFER et al., :

Plaintiffs, :

73 Civ. 1940-LFM

-against- :

MEMORANDUM

EMPIRE FIRE AND MARINE INSURANCE :
COMPANY et al., :

Defendants. :

-----x

MacMAHON, District Judge.

Plaintiffs move under Rule 56, Fed.R.Civ.P., and Civil Rule 11A of this court for an order declaring that this action be maintained as a class action. Invoking Canons 4 and 9 of the Code of Professional Responsibility and the supervisory power of this court, the individual defendants Empire Fire and Marine Insurance Company (Empire) and Sitomer, Sitomer & Porges (Sitomer firm) cross-move for an order disqualifying plaintiffs' attorneys from representing plaintiffs in this action or associating with any other attorney in the prosecution of this action; enjoining plaintiffs,

their attorneys and Stuart Charles Goldberg from further disclosing confidential information regarding Empire; directing the Clerk of the court to seal that part of the file containing confidential information; dismissing this action without prejudice; and granting such other relief as the court may deem proper. We shall consider the cross-motion first.

Empire retained the Sitomer firm to draft a registration statement in connection with a public offering of Empire stock. Goldberg, a limited partner of the law firm from November 15, 1971 until January 21, 1973, was actively involved in the preparation of the statement or in the necessary background work, such as, reviewing the minutes of Empire. The registration statement for the Empire issue was dated May 31, 1972.

In January 1973, Goldberg became aware of what he felt were material omissions concerning certain compensation agreements between the Sitomer firm and Empire. Evidently, the possibility that these agreements would become public was the subject of much discussion within the Sitomer firm. Goldberg thought that full disclosure to the Securities and Exchange Commission (SEC)

was proper and obligatory. He asked his personal attorney to contact Stanley Sporkin, Deputy Director of the SEC's Division of Enforcement, explain the nature of the problem and make known Goldberg's availability to meet with the SEC to discuss the problem.

A meeting between Goldberg and SEC representatives was arranged for Monday morning, January 22, 1973. The night before this meeting, Goldberg sent telegrams to two limited partners in the Sitomer firm advising them of his immediate resignation from the firm and of his meeting with the SEC "for the purpose of making full and complete disclosure regarding the activities of the firm in regards to securities practice."

During the next week, Goldberg discussed the firm's activities with respect to the Empire registration statement and also with respect to another registration statement which the firm had been preparing. He submitted a lengthy affidavit to the SEC outlining these activities on January 26, 1973. No member of the firm participated in or appeared at these discussions notwithstanding their present claims that they intended

to make full disclosure. The SEC has commenced an investigation of these transactions.

Empire filed its annual report with the SEC (Form 10k) on April 12, 1973. This report made public disclosure for the first time of the compensation agreements. The report was distributed to Empire's stockholders on or before April 30, 1973.

Plaintiffs filed their original complaint on May 2, 1973 asserting that the omission of the compensation agreements from the registration statement was a violation of the securities laws.¹ Service was made on that same day on the Sitomer firm and its general partners. Plaintiffs' counsel (counsel) telephoned Goldberg on May 3, 1973, informed him that an action had been commenced and that Goldberg was named as a defendant. Goldberg denied any wrongdoing and told counsel of his efforts to have the Sitomer firm make disclosure and of his own disclosure before the SEC. Counsel agreed that if Goldberg were not involved in the alleged omissions, they would move to drop ^{Goldberg} ~~him~~ as a party defendant. Goldberg then asked if he could see a copy of the complaint without being served.

Counsel arranged to meet Goldberg in front of counsel's office building. At this meeting on May 3, 1973 counsel requested a copy of Goldberg's SEC affidavit but he refused to disclose it until he had spoken with his own attorney and with the SEC. After discussing the matter with his attorney, Goldberg arranged to meet counsel on May 7, 1973 at counsel's office. At this meeting, he again refused to show counsel his affidavit until he had spoken with the SEC. Counsel and Goldberg then called William P. Sullivan, Special Counsel at the SEC. Mr. Sullivan stated that the SEC had no objection to disclosure of the affidavit. Goldberg then gave counsel a copy. A discussion followed.

Subsequent to this meeting, counsel moved for an order dropping Goldberg as a named defendant. We granted that motion since Goldberg had not been served and since no prejudice would accrue to any other party. Defendants now assert that their cross-motion should be granted because counsel aided and abetted a disclosure of confidential information and because counsel have failed to avoid the appearance of impropriety, in violation of Canons 4 and 9 of the Code of Professional Responsibility.

It is the duty of the court to examine charges of unethical conduct and to supervise the conduct of its attorneys.² When considering such charges, courts may not rely upon the good faith of the attorneys involved, but rather must apply "a strict prophylactic rule to prevent any possibility, however slight, that confidential information acquired from a client during a previous relationship may subsequently be used to the client's disadvantage."³

Canon 4 provides that "a lawyer should preserve the confidences and secrets of a client." This obligation is broader than the evidentiary attorney-client privilege and "exists without regard to the nature or source of information or the fact that others share the knowledge."⁴ Furthermore, the court does not stop to inquire whether any information which Goldberg or his firm may have disclosed to plaintiffs' counsel was in fact confidential, for such an inquiry would reveal the very confidences sought to be protected. All that need be shown, therefore, is that during the attorney-client relationship Goldberg had access to his client's information relevant to the issues here.⁵

Canon 9 provides that a "lawyer should avoid even the appearance of professional impropriety." Every effort must be made, therefore, to ensure not only that the actions of lawyers are proper but also that they appear to be so. The appearance of propriety may be as necessary as the fact.⁶

Goldberg had been actively involved in the preparation of Empire's registration statement. He inspected its minute books and before going to the SEC in January 1973 inspected Empire's file. There can be no question, therefore, that Goldberg had access to client material related to the issues here. Likewise, there can be no question that he has associated with, and made disclosures to, the plaintiffs without the consent of Empire. The mere association compromises the confidences which Canon 4 seeks to protect. At the very least, when a former client is sued, he has a right to assume that his former attorneys will not voluntarily disclose what they know about the issues in litigation to the client's adversary or to his adversary's attorneys.⁷ The fact that Goldberg no longer represented Empire, or even that plaintiffs had named him as a defendant, does not relieve him of his professional responsibility.⁸

Furthermore, association with the former client's adversary gives the appearance of impropriety. All other defendants were served; Goldberg, alone, among the named defendants was not served, and it was counsel for the plaintiffs who requested that Goldberg be dropped as a defendant. However innocent the association with the former client's adversary's counsel may have been, it clearly has the appearance of impropriety.

Counsel for the plaintiffs cannot disentangle themselves from the tainted association. They agreed to meet with Goldberg and were willing, if not eager, listeners to disclosures of confidences which they knew, or should have known, were protected by the Canons of Professional Responsibility. They, thus, not only encouraged but also participated in a violation of Canon 4 and Canon 9.

Plaintiffs argue, however, that the alleged omissions and misstatements by Empire constitute, if true, a continuing criminal and civil violation of the anti-fraud provisions of the securities laws and that, therefore, Goldberg was required to reveal the information

to the SEC by Disciplinary Rule 7-102(B) (1). That rule provides:

"A lawyer who receives information clearly establishing that:

- (1) His client, has in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal."

Goldberg disclosed the information to the SEC in January 1973, and in April of that year Empire disclosed the information in its annual report to stockholders which it filed with the SEC. The complaint here was thus filed on the basis of information already public. Disciplinary Rule 7-102(B) (1) requires the lawyer to reveal the fraud only if the client refuses to do so. Since the client had already revealed the omission to its stockholders and to the public, via the SEC, Goldberg had no further obligation under Disciplinary Rule 7-102(B) (1) to reveal the information or to discuss the matter with plaintiffs' counsel.⁹

Plaintiffs further argue that Goldberg's disclosures could have been compelled through the discovery

process. The argument is both immaterial and premature. As we have shown, the issues raised here are broader than the attorney-client privilege and whether the disclosure of information will offend that privilege must await concrete situations during discovery or trial. Moreover, discovery is conducted within the supervision of the court. No such safeguards were available at the meetings between plaintiffs' counsel and Goldberg.

Plaintiffs also raise other arguments based on the attorney-client privilege. They attempt to show that the attorney-client privilege does not apply and therefore that there was no bar to Goldberg's meeting with plaintiffs' counsel. These arguments are inapposite, since, as we have seen, we are concerned with the broader obligations of Canons 4 and 9. We hold only that, under the circumstances shown here, the meetings between Goldberg and counsel were violative of Canons 4 and 9. We need not and do not reach any situation which may later arise where the attorney-client privilege may be in issue.

We now consider the scope of the relief. The circumstances of this case have put all parties and

counsel in an unusual situation. The questions presented are close. Both Goldberg and counsel consulted as to the propriety of their meetings and the disclosures, and we think they acted in good faith. However, in keeping with the "strict prophylactic rule" of Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562 (2 Cir. 1973), to protect confidences and to ensure propriety and the appearance of propriety on the part of the bar, we must prevent such conduct as that shown here.

Accordingly, counsel for plaintiffs and Goldberg are enjoined and barred from acting as counsel or participating in any way with counsel for the plaintiffs in this action or in any future action against Empire involving the same transactions, occurrences, events, allegations, facts or issues, and they are further enjoined from disclosing confidential information regarding Empire to others except to comply with rulings of the court on discovery proceedings or upon trial. All other injunctive relief requested is denied.

The affidavits submitted to us in camera, specifically, Goldberg's affidavit of June 21, 1973 and Goldberg's affidavit of January 26, 1973 prepared for the SEC, shall be made a part of the record

and sealed by the Clerk of the court.

In light of the foregoing, it becomes necessary to dismiss the complaint and this action without prejudice. Since we have dismissed the action, there is no need to consider plaintiffs' motion for an order determining this to be a class action.

So ordered.

Dated: New York, N. Y.

August 23, 1973



LLOYD F. MACMAHON
United States District Judge

Meyerhofer v. Empire Fire & Marine Ins. Co.
73 Civ. 1940-LFM

FOOTNOTES

1

The X firm and the general partners have attempted to show that counsel for plaintiffs had become aware of the firm's predicament through discussion with the X firm concerning the renting of a part of the firm's office space by counsel for plaintiffs. They evidently are trying to posit some breach of confidence by counsel or by a third party who acted as intermediary in the renting discussion. This has caused counter-charges and replies. Although there are evidently questions of fact here, we do not feel that a hearing is necessary since resolution of these issues is not necessary to determine the cross-motion.

2

Emle Industries, Inc. v. Patentex, Inc., 478 F.2d 562 (2d Cir. 1973); Richardson v. Hamilton Int'l Corp., 469 F.2d 1382 (3d Cir. 1972), cert. denied, 41 U.S.L.W. 3608 (U.S. May 14, 1973).

3

Emle Industries, Inc. v. Patentex, Inc., supra, 478 F.2d at 571.

4

Ethical Consideration 4-4. See Doe v. A Corp., 330 F. Supp. 1352, 1356 (S.D.N.Y. 1971), aff'd per curiam, 453 F.2d 1375 (2d Cir. 1972).

5

Emle Industries, Inc. v. Patentex, Inc., supra, 478 F.2d at 571; Richardson v. Hamilton Int'l Corp., supra; Empire Linotype School, Inc. v. United States, 143 F. Supp. 627, 632 (S.D.N.Y. 1956); T. C. Theatre Corp. v. Warner Bros. Pictures, Inc., 113 F. Supp. 265, 268, motion to reargue denied, 125 F. Supp. 233 (S.D.N.Y. 1953).

6

Emle Industries, Inc. v. Patentex, Inc., supra,
478 F.2d at 571.

7

Ethical Considerations 4-2 and 4-5.

8

Ethical Consideration 4-6.

9

We do not consider the propriety of Goldberg's
disclosures to the SEC.

Read
Hammond & Salazar PC
6/4/74 2:45 pm TB

